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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 29th March, 2023

No. 13/1/9954-HII(2)-2023/4359.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 19/2022 dated 11.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KANHAIYA LAL S/O SH. MURTI RAM, AGED 54 YEARS R/O HOUSE NO. 229, VILLAGE KAJHERI, SECTOR 52, CHANDIGARH. (Workman)

AND

M/S GHAZAL RESTAURANT & PUB, SCO NO. 189-191, SECTOR 17-C, CHANDIGARH THROUGH ITS PROPRIETOR/OCCUPIER AND MANAGER. (Management)

AWARD

1. Kanhaiya Lal, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was engaged by the management w.e.f. 01.01.1982 in Kitchen. Last drawn wages of the workman were ₹ 14,000/- per month. From date of joining, he had continuously worked right up to 08.06.2020 and had performed his duties to the best of his abilities. The workman successfully performed his allotted duties as per the instructions of the management. He was punctual and honest towards his duties. There was no single complaint towards his job and conduct. The management was entirely satisfied with his work and conduct. The Government of India declared lock down on 23.03.2020 and lifted the same in June 2020. Thereafter, the workman reported for duty again and again but the management did not allow him work. On 20.04.2020 the management terminated the services of the workman without giving any prior notice to the workman. When the workman approached the management, the Proprietor refused work to him without giving any reason of the termination of service. The behavior of the management clearly shows their malafide intention in terminating the workman, which is bad in law. This is clear violation of principles of natural justice. The workman is totally unemployed after he was arbitrarily terminated by the management. The management has not issued any memo, charge sheet, nor conducted any enquiry in any matter before termination till date. The workman requested verbally or in writing

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several times to concerned officer to take him back on duty but the management did not hear his genuine requests. This is also gross violation of principles of natural justice. The workman is facing all difficulties of unemployed person including starvation. The management has not paid or offered notice pay in lieu of notice or compensation to the workman. The job of workman exists as it is till date and the workmen junior to the workman are still retained in service by the management. Therefore, it is serious violation of Section 25-F, 25-G, 25-H and other provision of the ID Act. The illegal termination order has badly disturbed the survival of workman and his family. The action of the management is based on the policy of 'Hire & Fire' and is colorable exercise of power. The management never provided or allowed leave with wages to the workman and never issued Leave Cards to the workman. Not even a single penny has been given to the workman for his overtime wages. Due to pre-determination, the management intentionally did not issue appointment letter, attendance card and wages slips to the workman. The management knowingly did not comply with the provision of concerned law during service of workman and infringed the mandatory provision of the law. The management verbally terminated the services of workman. At the time of termination, the hotel management have neither offered nor paid any type of financial benefits nor assured re-employment to the workman. Thus, the termination order is in violation of all mandatory provisions of ID Act. The verbal termination order is illegal unjustified, mala fide and violation of the ID Act. Prayer is made that the workman may be reinstated with full back wages, continuity of services and consequential benefits.

2. On notice, the management appeared through its Manager Sanjeev and contested the claim of the workman by filing written statement on 23.01.2023, wherein preliminary submissions are made that the present claim statement is not maintainable under the ID Act. The applicant is not a 'workman' under the ID Act and is therefore not entitled to seek relief under the ID Act. The applicant has admittedly always been employed in a senior capacity wherein he has supervised the work of his junior(s) and has directed them in the respective departments. The applicant earlier worked in the steward department and later in the pantry department, but always in a supervisory senior capacity with the responsibility to direct and supervise the work of his junior(s). Further, as admitted by the Applicant, he was drawing more than ten thousand rupees per mensem. Therefore, the present application is not maintainable under the ID Act and deserves to be dismissed on this ground alone. The applicant has moved this application on the false grounds that he was verbally terminated. It is the applicant who choose to stop coming to work and in fact caused a lot of hardship to the management. Since there was no termination, the present claim is not maintainable, nor can the prayers stated therein be granted by this Tribunal. The applicant is completely inconsistent in his submissions and this shows his *mala fide* intentions. The duration of work and the date till which he allegedly worked for the management is stated differently in the present claim statement and differently in the application moved before this Tribunal under Section 33-C(2), i.e. LCA No. 7/2022 titled *Kanhaiya Lal vs Ghazal Restaurant & Pub*. In the present claim statement, he states that he worked till 08.06.2020 whereas in LCA No. 7/2022, he states that he worked till 11.02.2021. This is a major discrepancy. The applicant has failed to produce even a single shred of evidence in his favour. All his claims have been made without a single documentary proof and clearly reflect that the applicant is trying to take advantage of the system designed to protect genuine workmen. He is simply trying to harass the respondent and seeking unjust enrichment.

3. It is further stated that the applicant has not only painted a completely false picture of the facts in this application but has failed to bring to light pertinent facts. In fact, the applicant has in the past worked at the respondent establishment, however, the applicant has failed to reveal his actions and his hand in the events that followed. The applicant has always worked in a supervisory role. The applicant was an extremely undisciplined, uncouth and unpunctual worker with an admitted alcoholism issue. He would often show up to work drunk and abuse other workers and customers, especially his subordinates. Multiple complaints against him have been raised over the years. The applicant was orally warned to which he promised to work well. However, his behaviour rarely changed. On 06.07.2018, the applicant was issued a warning letter as it was found that he was negligent with his duties and had come to work extremely drunk. The applicant himself accepted his mistake in writing and apologized for being negligent and drunk *vide* his letter dated 11.07.2018. Despite the same, the applicant only worked well for two months, after which he started showing up drunk again and

started misbehaving with his colleagues. Another Warning Letter was issued to him on 24.09.2018. On 28.07.2021, the applicant failed to show up to work. Further, he did not show up to work at any time thereafter. The applicant has been absent from work from 28.07.2021 onwards, and has never showed up at the respondent establishment or communicated any reason for such absenteeism. He was called on his provided phone number multiple times and letters were also sent to the address provided by him as his residence. *Vide* letter dated 02.08.2021 warning issued to the applicant that he could be terminated due to excessive absenteeism. SMS was sent by the Administrator on 12.08.2021 conveying the same notice.

4. Further in para-wise reply, similar stand is taken as taken in preliminary submission referred above. Rest of the contents of claim statement are denied as incorrect. Prayer is made that the claim statement may be dismissed with costs.

5. During the pendency of the present industrial dispute on the application moved by the workman for settlement case taken up in the Pre-Lok Adalat held on 06.02.2023 wherein the parties settled their dispute amicably. Shri Sanjeev Kahlon - Manager of the management got record his statement on 06.02.2023, which is reproduced as below :—

"Stated that the management is ready to settle the dispute with the workman and to pay the workman Rs.3,35,000/- towards full & final settlement of his claims i.e. right of reinstatement, bonus, un-paid wages, un-paid leaves, compensation, gratuity and any other dues. The payment of settlement will be paid to the workman in the Lok Adalat."

6. The workman also got recorded his statement on 06.02.2023, which is reproduced as below :—

"I have heard the statement of Shri Sanjeev Kahlon - Manager of the management and ready to settle my claims with the management and receive the offered amount. The present case may kindly be taken in Lok Adalat."

7. On 07.02.2023 again file taken in the Pre-Lok Adalat on the application moved by the workman and the workman got recorded his statement, which reproduced as below :—

"Stated that as per settlement dated 06.02.2023 arrived between the management and the workman, I have received cheque No.165234 dated 07.02.2023 for a sum of ₹ 2,85,000/- of Axis Bank Limited, Sector 17-B, Chandigarh and ₹ 50,000/- (in cash) towards full & final settlement of my claims i.e. right of reinstatement, bonus, un-paid wages, un-paid leaves, compensation, gratuity and any other dues. Copy of cheque is Mark 'A'. The present industrial dispute may be disposed off accordingly in Lok Adalat."

8. The above statements of the workman are countersigned by his Representative.

9. The case taken up in National Lok Adalat. Heard. In view of the above statement of the workman, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

The 11th February, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No.PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 29th March, 2023

No. 13/1/9953-HII(2)-2023/4361.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 40/2019 dated 16.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJINDER SINGH S/O SHRI SALU SINGH, R/O HOUSE NO. 133, WARD NO.9, MOHALLA KAKRA BASSI, VPO BANUR, DISTRICT MOHALI, PUNJAB. (Workman)

AND

GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I, INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER. (Management)

AWARD

1. Rajinder Singh, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that on 10.08.2011 the workman joined the services with the company named as Groz-Beckert Asia Pvt Ltd. (*hereinafter in short 'company'*). During the service period the workman worked with full dedication and devotion, honesty and sincerity for the advancement of the company. In the month of November, 2018 the services of the workman were illegally terminated in pursuance of illegal and one sided departmental inquiry on the basis of false allegations. The company is in the process of reducing the manpower and hence forcing the workmen to resign from the job. Similarly, on 13.07.2018, the workman was called in the office of Production Head Shri Sukhwinder Singh and was forced to sign a letter in English language. The workman did not know the contents of the letters. Therefore, the workman was sent back home and asked to come in HR Department at 10:00 A.M. next day. On 20.07.2018 the workman was again handed over one more letter in English letter by HR Department in which the false allegations were made upon the workman. The workman reported all this to the General Secretary, GBA Workers' Union. The workman replied to the above charge sheet *vide* his reply dated 26.07.2018 and rebutted all the allegations. Despite proper reply, a farce and one sided inquiry was initiated upon the workman and relying upon tutored management's witnesses and ignoring the workman's witnesses, the workman was held guilty for the charges imposed. The said inquiry was a farce, on the basis of false complaint and tutored witnesses and in violation of principles of natural justice. The workman is not allowed to enter the factory premises. The workman has been verbally told that he has been dismissed from the services but till today neither the dismissal orders have been given to the workman nor his dues have been cleared. The order of termination is illegal and not sustainable in the eyes of law and is liable to be set aside *inter alia* on the following grounds :—

- a) The management of the company has not complied with Certified Standing Orders and dismissed the services of the workman without giving him proper opportunities of hearing and denying principles of natural justice.
- b) The management of the company appointed an outsider namely Shri A. S. Raikhy - Advocate as an Inquiry Officer, contravention of the Certified Standing Orders and this fact was well within the knowledge of the management. Even then the management opted to appoint Inquiry Officer to such a person, who was able to give his report under the dictates of the management.

- c) The order of termination is in contravention of the Certified Standing Orders and also against the terms & conditions of the appointment letter of the workman.
- d) The management of the company did not bother to adhere the statutory provisions of the ID Act, therefore, the order of termination is not sustainable and liable to be set aside.
- e) The services of the workman has been terminated without seeking any prior approval from the Hon'ble Industrial Tribunal & Labour Court, U.T. Chandigarh and filed application for the same after dismissal, which is illegal. The issue / dispute of the factory workers is still pending with the Hon'ble Industrial Tribunal & Labour Court, Chandigarh.
- f) No orders of dismissal have been made up by the management as no such order have been handed over to the workman till today. The workman is not allowed to enter the factory premises without any speaking orders. Though the management has attached one photocopy of such orders with this application before the Hon'ble Industrial Tribunal & Labour Court, U.T. Chandigarh.

In view of the aforesaid submissions, prayer is made that the order of dismissal dated 28.11.2018 may be declared as illegal being in total violation of Labour Law and principles of natural justice. In the interest of justice, the workman may be ordered to be reinstated into service of the company with all the service benefits including back wages and continuity of service from the date of illegal termination.

2. On notice the management contested the claim statement by filing written statement on 07.01.2021 wherein preliminary submissions are made on the ground that the concerned workman was charge sheeted *vide* charge sheet dated 20.12.2018 (correct date 20.07.2018) for major misconduct of "Theft within the factory or fraud or dishonesty in connection with company's business, taking out of the works and articles or material belonging to the company without a gate pass issued by the company and hiding away or attempting to hide away any article or material under Standing Order No.23 II(h), 23II(i), 23II(j) of the Certified Standing Orders of the company. After having found his explanation unsatisfactory, a domestic inquiry was initiated. Shri A. S. Raikhy was appointed as a Inquiry Officer to conduct the inquiry into the said charge sheet. As desired by the workman, the inquiry was conducted in Hindi. The workman was allowed the assistance of his co-worker in the inquiry proceedings. The list of management's witnesses and copies of the documents on which the management relied upon were supplied to the workman before the evidence is recorded in the inquiry. The management witnesses were examined in the presence of the workman and his co-worker. Similarly he was cross-examined in the presence of his co-worker. The inquiry has been conducted in accordance with the principle of natural justice and the Certified Standing Orders of the company. The workman was found guilty of the major misconduct as contained in the charge sheet by the Inquiry Officer *vide* his report dated 03.11.2018. A copy of the inquiry report was supplied to the workman for his comments *vide* letter dated 5.11.2018. The workman submitted his comments to the report of the Inquiry Officer *vide* his letter dated 06.11.2018. But the workman still wanted one week's more time to submit further comments. His request was accepted. The issue with regard to the appointment of an outsider as the Inquiry Officer was also clarified *vide* letter dated 13.11.2018, in response to workman's letter dated 12.11.2018. *Vide* the same very letter dated 13.11.2018, the workman was advised to submit further comments, if any, latest by 17.11.2018. The workman did not submit further comments. Therefore, the management has to examine the inquiry proceedings and the evidence led by both the parties during inquiry and the report of the Inquiry Officer and also the written comments submitted by the workman *vide* his letter dated 06.11.2018 and found that the inquiry was conducted in a fair and proper manner and in accordance with the principles of natural justice and certified standing Orders of the company and then the management concurred with the findings of the Inquiry Officer. His past record was also consulted but no extenuating circumstances were found on the basis of which a lenient view could have been taken. In view of seriousness of the charges having been proved against the workman, it was decided to impose upon him punishment of dismissal from the service of the company under Standing Order No.23 III (a) of the Certified Standing Orders of the company and accordingly the workman was dismissed

from service *vide* order of dismissal dated 28.11.2018. In the light of the above, the management at the first instance relies upon the domestic inquiry and the report of the Inquiry Officer. However, if this Hon'ble Court comes to the conclusion that the inquiry is vitiated for any reason whatsoever, then in that eventuality the management may be given opportunity to lead evidence in order to prove the charges afresh against the workman before this Court.

3. Further preliminary objections are raised on the ground that the present statement of claim / reference is not maintainable among other reasons on the grounds that the present reference is without jurisdiction and not maintainable in the eyes of law as the concerned workman while working as a technician had committed the serious and grave acts of misconduct for which he was charge sheeted *vide* charge sheet dated 22.12.2018 (correct date is 20.07.2018). In view of the contents of the charge sheet, the conduct of the workman amounts to theft of the property of the company and dishonesty in connection with company's business which makes him liable for strict disciplinary action. If these charges are proved against the workman, the management would be constraint to lose confidence and trust in the workman as an employee of the company. Thereby the workman was charge sheeted for the following major misconduct as per the Certified Standing Orders of the company.

<u>Sr. No.</u>	<u>Standing Order No.</u>	<u>Particulars of misconduct / misdemeanours</u>
1.	23 II(h)	Theft within the factory or fraud or dishonesty in connection with company's business.
2.	23 II(i)	Taking out of the works and article or material belonging to the company without a gate pass issued by the company
3.	23 II(j)	Hiding away or attempting to hide away any article or material.

The workman was directed to submit his written explanation to the aforesaid imputation of misconduct within two days i.e. on or before 24.07.2018 by 4:00 P.M., as to why disciplinary action should not be taken against him, failing which it will be presumed that the workman has admitted the charges as correct and has no explanation to offer.

4. Further on merits, it is admitted as correct that the workman has joined his duties with the management on 10.08.2011 as Technician - 1 on probation for which appointment letter dated 09.08.2011 was issued to him. The services of the workman have been dispensed with on account of proved major misconduct of "theft" as narrated in the preliminary submissions. The dismissal order is bonafide, legal and justified. Serious allegations were alleged against the workman when he was on duty on 13.07.2018 and he was placed under suspension *vide* letter dated 13.07.2018 and thereafter a detailed charge sheet dated 20.12.2018 (correct date 20.07.2018) was issued to him. It is denied as false and wrong that the workman was called in the office of Production Head Shri Sukhwinder Singh on 13.07.2018 and that he was forced to sign a letter written in English. The contents of suspension letter dated 13.07.2018 were first explained to him and then the same were served upon him by the HR Department. The workman was charge sheeted *vide* charge sheet dated 20.12.2018 (correct date 20.07.2018) for the charges of theft under Standing Order No.23II(h), 23II(i) and 23II(j) of the Certified Standing Orders of the company. The workman submitted his reply *vide* letter dated 26.07.2018 to the said charge sheet. The reply to the charge sheet was duly considered and found unsatisfactory. Thereafter, in order to offer full opportunity to the workman, domestic inquiry was ordered to be initiated. The inquiry was conducted in a fair and proper manner. The factual position is that the dismissal order dated 28.11.2018 along with the cheque of ₹ 30,833/- was sent under registered post at the correct address of the workman. The registered cover containing dismissal order and the cheque was received back undelivered on 07.12.2018 with the postal remarks "*addressee not known, thus returned*". The letter was intentionally not received by the workman as the other three letters dated 07.12.2018, 14.12.2018 and 02.02.2019

whereby the cheque for ₹ 40,922/- towards full & final dues, cheque for ₹ 76,420/- towards payment of gratuity and cheque for ₹ 17,407/- towards payment of GSLIS sent at the same address were received by the workman. The management had filed an application on 28.11.2018 itself under Section 33-2(b) of the ID Act seeking approval of the action taken in terms of dismissal order dated 28.11.2018 due to the pendency of reference No.113 of 2016 and reference No.84 of 2018. The dismissal order is legal, bonafide and justified and is not liable to be set aside. The dismissal order is not in contravention of the Certified Standing Orders of the company or against the terms & conditions of the appointment letter of the workman. The certification proceedings for the purpose of certification of the Standing Orders are in the nature of tripartite proceedings as it includes three parties namely the Certifying Officer (which the Assistant Labour Commissioner, Chandigarh); the management's representatives and the representatives of the workers' union. After the certification of standing orders, the Certified Standing Orders becomes binding for the management and the workers and the same also become the statutory condition of the service of the contract of all the existing workmen or workmen to be appointed in future and thus none of the clauses of the Certified Standing Orders can be agitated later on. The one of the terms & conditions of the appointment letter dated 09.08.2011 provides that the services of the workman would be governed by the Standing Orders and other rules & regulations as in existence in the factory and made from time to time. The dismissal order of the workman has been passed as per the Certified Standing Orders of the company and also as per the contract of service of the workman and thus there is no illegality at all therein. The management has fully complied with the provisions of the ID Act. Rest of the contents of the claim application are denied as wrong and prayer is made that the statement of claim / reference may be dismissed with exemplary costs.

5. Replication not filed. From the pleadings of the parties issues were framed *vide* order dated 06.09.2021 and thereafter the issues were reframed *vide* order dated 29.11.2021 and additional issue No.1-A was framed *vide* order dated 06.02.2023:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
- 1-A Whether the inquiry conducted by the management is fair & proper ? OPM
2. Relief.

6. The workman Rajinder Singh in its evidence examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 03.01.2023 the workman closed his evidence in affirmative.

7. On the other hand, management examined MW1 A. S. Raikhy (Inquiry Officer), who tendered his affidavit Exhibit 'MW1/A'. It is pertinent to mention here that the management in cross-examination of AW1 had put documents Exhibits 'M1' to Exhibit 'M13'.

Exhibit 'M1' is certified copy of the inquiry file containing pages 1 to 53.

Exhibit 'M2' is the copy of suspension letter dated 13.07.2018 issued by the Factory Manager, GBA to the workman.

Exhibit 'M3' is the copy of letter dated 15.11.2018 issued by GBA to the workman whereby the copy of inquiry report in respect of charge sheet dated 20.12.2018 (correct date 20.07.2018) was supplied to the workman.

Exhibit 'M4' is copy of letter dated 06.11.2018 whereby the workman sought extension of time period of one month to submit his comments to the inquiry report.

Exhibit 'M5' is copy of letter dated 12.11.2018 issued by the workman to the Factory Manager, GBA for supply of copy of Inquiry Officer's report in respect of charge sheet dated 20.12.2018 (correct date 20.07.2018).

Exhibit 'M6' is copy of reply dated 30.11.2018 sent through registered post *vide* postal receipt dated 14.11.2018 to the workman relating to written comments to the report of the Inquiry Officer.

Exhibit 'M7' is copy of order of dismissal dated 28.11.2018 passed by the Factory Manager, GBA related to workman Rajinder Singh.

Exhibit 'M8' is certified copy of undelivered registered postal envelope addressed from GBA to workman Rajinder Singh which bears postal endorsement '*addressee not known*'.

Exhibit 'M9' is copy of letter dated 07.12.2018 issued by the Factory Manager, GBA to workman Rajinder Singh *vide* postal receipt dated 08.12.2018 *vide* which cheque No.503910 dated 06.12.2018 drawn on IDBI Bank for sum of ₹ 40,922/- was issued by the GBA in favour of Rajinder Singh towards payment of full & final settlement of account.

Exhibit 'M10' is copy of letter dated 14.12.2018 issued by the Factory Manager, GBA to workman Rajinder Singh *vide* postal receipt dated 14.12.2018 *vide* which cheque No.005528 dated 13.12.2018 for sum of ₹76,420/- payable at ICICI Bank, Sector 17-C Branch, Chandigarh was issued by the GBA in favour of Rajinder Singh towards payment of gratuity.

Exhibit 'M11' is copy of letter dated 02.02.2019 issued by the Factory Manager, GBA to workman Rajinder Singh *vide* postal receipt dated 02.02.2019 *vide* which cheque No.503593 dated 29.01.2019 drawn on IDBI Bank for sum of ₹ 17,407/- was issued by the GBA in favour of Rajinder Singh towards payment of GSILS.

Exhibit 'M12' is copy of Certified Standing Orders in respect GBA.

Exhibit 'M13' is copy of appointment letter dated 09.08.2011 issued by GBA in favour of Rajinder Singh whereby Rajinder Singh was appointed as Technician in Cat.-I in the organisation of the management w.e.f. 10.08.2021.

On 15.02.2023 Learned Representative for the management closed the evidence.

8. I have heard arguments of Learned Representatives for the parties and have perused the judicial file. My issue-wise findings are as below :—

Issue No.1 & 1-A :

9. Both these issues are taken up together being inter connected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No1-A is on the management.

11. In support of its case the workman Rajinder Singh examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim application in toto, which are not reproduced here for the sake of brevity.

12. On the other hand, the management has examined MW1 A. S. Raikhy - Inquiry Officer *vide* his affidavit Exhibit 'MW1/A' deposed that he was appointed as Inquiry Officer *vide* letter dated 30.07.2018 by the management to hold inquiry into the charges as mentioned in the charge sheet dated 20.12.2018 (correct date is 20.07.2018) which is issued to Rajinder Singh, the charge sheeted employee. He has sent a letter dated 01.08.2018 to Rajinder Singh, whereby he was intimated regarding holding of inquiry. The proceedings were recorded in Hindi as desired by Rajinder Singh. A list of witnesses and copies of the documents on which the management relied upon were supplied to Rajinder Singh on 14.08.2018. The workman was allowed the assistance of his co-worker in the inquiry as provided in the Certified Standing Orders of the company. Vikas Ani, was the co-worker who participated along with the workman in the inquiry proceedings. He / deponent gave full opportunity to the workman to defend himself in the inquiry. The witnesses of the management were examined in the presence of the workman and his co-worker and were cross-examined by them and thereafter the workman led his own evidence. He was examined by the management's representative in the presence of his co-worker. He / deponent conducted the inquiry in accordance with the principles of natural justice and Certified Standing Orders of the company. The inquiry file is already on the Court file *vide* Exhibit 'M1'. The proceedings are signed by him at the end of each day of the proceedings. These are also signed by the concerned workman and his co-worker as well as by the management's representative. MW1 deposed that

he identify his signatures on the inquiry proceedings and inquiry report. He submitted his report dated 03.11.2018 which bears his signatures. He after having examined the oral as well documentary evidence on record came to the conclusion that Rajinder Singh was guilty of charges as contained in charge sheet.

13. From the oral as well as the documentary evidence led by the parties, it comes out that admittedly the workman was appointed as Technician in Cat. - I in the organisation of management w.e.f. 10.08.2011 vide appointment letter Exhibit 'M13'. As per condition No.13 of the appointment letter Exhibit 'M13', the workman's service conditions will be governed by the Standing Orders and other rules and regulations as in existence in the Factory and made from time to time. AW1 in his cross-examination admitted as correct that the company has its own Standing Orders which is Exhibit 'M12'.

14. The workman has been charge sheeted for major mis-conduct / misdemeanours under Standing Order No.23II(h) to (j) of Certified Standing Orders, which are reproduced as below :—

"(h) theft within the factory or fraud or dishonesty in connection with the company's business.

(i) taking out of the works and articles or material belonging to the company without a Gate Pass issued by the company.

(j) hiding away or attempting to hide away any article or material."

15. It is argued by Learned Representative for the workman that as per the charge sheet there is an allegation of stealing three needles (needle type of Ravisa 79.106G03 (lot No.110100755654) by the workman which were allegedly kept by the workman in his shirt's pocket and were recovered from his possession on the same day i.e. 13.07.2018 when the three needles were found missing. Much stress is laid upon the fact by Learned Representative for the workman that in order to prove the charge of theft, as per the requirement of Section 378 of the IPC, it is necessary to prove that the article in question was stolen with dishonest intention and there must be removal of the stolen property but in the present case neither there is neither any allegation of dishonest intention against the workman nor the alleged stolen property was taken out of the factory premises. To my opinion, the aforesaid argument advanced by Learned Representative for the workman does not carry any force because in the charge sheet forming page 35-36 of the inquiry file Exhibit 'M1/1', there is specific allegation dishonest intention. The relevant portion of Exhibit 'M1/1' is mentioned as below :—

"The aforesaid conduct of yours amounts to theft of the property of the company and dishonesty in connection with the company's business and it makes you liable for strict disciplinary action."

16. Under Section 378 of IPC Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. As per explanation 3 to Section 378 of IPC, a person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it. In the present case as per the allegations levelled in the charge sheet the workman has stolen three needles from the needles box and the said three needles were recovered from his shirt's pocket. Thus, the moment the workman taken out the needles from the needles box and kept the same in his shirt's pocket, the offence of theft is complete irrespective of the fact that the workman did not succeed to take away the stolen needles out of the factory premises.

17. Learned Representative for the workman argued that the services of the workman were illegally terminated in November 2018 in pursuance of illegal and one sided departmental inquiry on the basis of false allegations whereas during the service period the workman worked with full dedication, devotion, honesty and sincerity for the advancement of the company. On the other hand, Learned Representative for the management argued that the workman was charge sheeted vide charge sheet dated 20.12.2018 (correct date 20.07.2018) for major misconduct of 'Theft within the factory or fraud or dishonesty in connection with company's business, taking out of the works and article or material belonging to the company without a gate pass issued by the company and hiding away or attempting to hide away any article or material under Standing Order No.23II(h), 23II(i) and 23II(j) of the Certified Standing Orders of the company. The explanation submitted by the

workman was found unsatisfactory and thus a domestic inquiry was initiated by Shri A. S. Raikhy, the Inquiry Officer. Moreover, the inquiry proceedings were conducted in Hindi as requested by the workman. The proceedings were held by following the proper procedure as prescribed under the Certified Standing Orders of the company and principles of natural justice. The workman was allowed assistance of his co-worker. The list of management's witnesses and the relied upon documents were supplied to the workman. The management's witnesses were examined in the presence of the workman and his co-worker and the workman was cross-examined in the presence of his co-worker. The Inquiry Officer found the workman guilty of the major misconducts as contained in the charge sheet vide his inquiry report dated 03.11.2018. The copy of the inquiry report was supplied to the workman vide letter dated 05.11.2018 seeking his comments. The workman's requests vide his letter dated 06.11.2018 for one week's more time to submit further comments was accepted. In response to workman's letter dated 12.11.2018 the issue with regard to the appointment of an outsider as an Inquiry Officer was clarified vide letter dated 13.11.2018 and in the same letter dated 13.11.2018 the workman was advised to submit further comments if any latest by 17.11.2018. The workman did not submit further comments. Thus, inquiry was conducted in a fair and proper manner. The above said argument advanced Learned Representative for the management carries force as the workman / AW1 when put to cross-examination admitted as correct that he was charge sheeted by the management. AW1 admitted as correct that he filed explanation to the said charge sheet. AW1 admitted as correct that domestic inquiry was conducted into the said charge sheet. The certified copy of the inquiry file containing pages 01 to 53 is Exhibit 'M-1'. AW1 admitted as correct that Shri A. S. Raikhy conducted the domestic inquiry. AW1 admitted as correct that Mr. Vikas Ani was his defence representative in the proceedings of domestic inquiry. AW1 admitted as correct that the management examined four witnesses in his presence and presence of his defence representative in the domestic inquiry proceedings. AW1 admitted as correct that his statement was recorded in defence in the presence of his defence representative in the domestic inquiry. He examined witness Paramjit in defence in his presence and presence of defence representative. AW1 admitted as correct that the management issued suspension letter Exhibit 'M-2' before initiating his domestic inquiry. AW1 admitted as correct that the Inquiry Officer held him guilty of the charges. AW1 admitted as correct that he was supplied with inquiry report vide letter dated 05.11.2018 / Exhibit 'M-3'. AW1 admitted as correct that vide letter dated 06.11.2018 / Exhibit 'M-4' he submitted his reply and sought more time to submit detailed comments on the inquiry report. AW1 admitted as correct that he had submitted letter dated 12.11.2018 / Exhibit 'M-5' to the Factory Manager seeking further clarification to which management sent reply dated 13.11.2018 through registered post which is Exhibit 'M-6'. Exhibit 'M-6' bears his correct postal address. AW1 admitted as correct that vide letter Exhibit 'M-6' he was asked to submit further comments if any by 17.11.2018. He do not remember if he had filed any further comments by 17.11.2018. He did not receive order of dismissal dated 28.11.2018 through registered post but he received the same by hand from the management. AW1 admitted as correct that order of dismissal dated 28.11.2018 / Exhibit 'M-7' bears his correct postal address. AW1 admitted as correct that he received cheque No.503910 dated 06.12.2018 for ₹ 40,922/- towards full & final settlement sent to him by the management through registered post vide letter dated 07.12.2018 / Exhibit 'M9'. AW1 admitted as correct that he has received cheque No.005528 dated 13.12.2018 for ₹ 76,420/- towards payment of gratuity sent to him by the management through registered post vide letter dated 14.12.2018 / Exhibit 'M10'. AW1 stated that he did not receive the cheque No.503593 dated 29.01.2019 towards GSILS sent to him through registered letter dated 02.02.2019 / Exhibit 'M11'. AW1 admitted as correct that the registered letter Exhibit 'M8' and Exhibit 'M11' bears the same postal address as mentioned on the registered letters Exhibit 'M9' and Exhibit 'M10'.

18. As far as the tender of one month's wages along with supply of dismissal order through RC Exhibit 'M8' and the tender of the amount of GSILS through letter Exhibit 'M11' is concerned, to my opinion, in view of the fact that Exhibit 'M8' i.e. registered post containing order of dismissal dated 28.11.2018 / Exhibit 'M7' along with cheque towards one month's wages and Exhibit 'MW11' bears correct postal address of the workman, it is proved that the management sent the same to the workman and it is the workman, who wilfully did not receive the same for the reasons best known to him. Moreover, the workman admittedly received the letters Exhibit 'M9' and Exhibit 'M10' which were also sent to him on the same address which was written on Exhibit 'M8' and Exhibit 'M11'.

19. The appointment letter dated 09.08.2011 / Exhibit 'M13' contains the terms & conditions which are accepted by the workman. In this regard the workman has not disputed his signatures on

appointment letter Exhibit 'M13' whereby he has signed the endorsement that he accept the above terms & conditions. The condition No.6 of appointment letter Exhibit 'M13' is reproduced as below :—

"6. That in the event of your becoming a confirmed workman, if you wish to terminate your employment with the Company you shall give prior notice of one month in writing or wages in lieu thereof of your intention to do so to the Management and in the event of the Management wishing to terminate your employment for any reason other than for misconduct they shall give you prior notice of one month in writing or wages in lieu thereof."

20. As per the settled law dismissal, payment of one month's wages and making of an application for approval should be simultaneous and part of the same transaction. In the present case, the management has proved the fact that before terminating the employment of the workman, the management had sent the wages of ₹ 30,833/- by way of cheque No. 503886 dated 28.11.2018 in lieu of one month prior notice to the workman through registered post which was received undelivered i.e. Exhibit 'M8'. Besides, the application under Section 33(2)(b) of the ID Act bearing LCA No.94 of 28.11.2018 was filed on 28.11.2018 i.e. the same day when dismissal order dated 28.11.2018 was passed. Thus, the management has made sufficient compliance of the mandatory requirement of Section 33(2)(b) of the ID Act. In this regard, the Hon'ble Supreme Court in its judgment titled as **The Management of Delhi Transport Undertaking Versus The Industrial Tribunal, Delhi & Another reported in AIR 1965 SC 1503** held that the proviso to Section 33 does not mean that the wages for one month would have to be actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective. The making of the tender of the amount before order of dismissal becomes effective would be sufficient compliance in this respect.

21. Learned Representative for the workman has taken plea that the management has not obtained prior approval or permission of the Court before terminating the services of the workman. To my opinion, the aforesaid plea lacks merits as the allegations of misconduct committed by the workman had no connection with the then pending industrial disputes i.e. IDR No.113 of 2016 and IDR No.84/2018. As such no prior approval or permission was required as the misconduct committed by the workman was not connected with the subject matter of IDR No.113 of 2016 and IDR No.84 of 2018. In the judgment titled as **Sri Dorairaj Spintex Versus R. Chittibabu & Others reported in 2021(4) SCT 337 SC**, it is held by Hon'ble Supreme Court that action of dismissal for misconduct was not connected with the dispute which was pending in conciliation, provision of Section 33(2)(b) would stand attracted.

22. The plea taken by the workman that on 13.07.2018, the workman was called in the office of Production Head Shri Sukhwinder Singh and was forced to sign a letter in English language and that the workman did not know the contents of the letter does not stand proved as this plea is contradictory to the plea taken by the workman in the reply filed in LCA No.94/2018. In the said LCA No.94/2018 the workman has taken the plea that the management tried to pressurise him to resign and to sign blank papers. In LCA No.94/2018 the workman did not mention any specific date, month or year when he was so pressurised by the management. Moreover, if the aforesaid plea of the workman taken in LCA NO.94/2018 is assumed as correct then it would imply that the management had put pressure on the workman to tender resignation and to sign blank papers. In LCA No.94/2018 it is not plea of the workman that he had either signed the resignation letter or he had put signatures on any blank paper. If the plea of the workman taken in the present case is assumed as correct then it would imply that the workman was not forced to sign any blank paper but forced to sign a document written in English language. In the present case the workman has not pleaded that he was pressurised by the management to tender resignation. Both the aforesaid pleas taken in the present case and in LCA No.94/2018 are self-destructive and thus not trustworthy. Learned Representative for the workman failed to controvert the fact that explanation dated 26.07.2018 to the charge sheet is the first document of defence of the workman during the inquiry proceedings and in the said explanation dated 26.07.2018 the workman did not take plea of forcing him to tender resignation or to sign a letter / document written in English or to sign any blank paper.

23. Learned Representative for the workman contended that an Inquiry Officer from outside was appointed. Under the Certified Standing Orders / Exhibit 'M12' there is no provision or clause to appoint an outsider as an Inquiry Officer, therefore the inquiry proceedings stand vitiated. On the other hand, Learned

Representative for the management has argued that there is no prohibition to appoint an Inquiry Officer from outside. Moreover, the Inquiry Officer appointed from outside is expected to take a more detached and impartial view while holding an inquiry in comparison to an officer of the management. To my opinion the inquiry proceedings cannot be vitiated on merely technical grounds. MW1 A. S. Raikhy (Inquiry Officer) in his cross-examination denied the suggestion as wrong that one sided inquiry has been conducted by him. MW1 denied the suggestion as wrong that the inquiry is unfair and partial. MW1 denied the suggestion as wrong that the principles of natural justice were not followed in the inquiry. MW1 denied the suggestions as wrong that no opportunity was given to the workman to defend his case. From the cross-examination of MW1 nothing material has come on record which could impeach his testimony. The suggestions put to a witness which are denied as wrong are no evidence unless proved otherwise. In the present case, the workman has failed to prove any of the suggestions put to MW1. Moreover, the workman has not alleged any hostility / enmity against the Inquiry Officer, thus there is no reason to believe the plea of the workman that the Inquiry Officer was biased or conducted unfair inquiry proceedings. The case law referred by Learned Representative for the management reported in **2002(94) FLR 1086 Bom. titled as Sandvik Asia Limited Versus Maruti Mahipati Jagadale & Another** is applicable to the facts of the present case to an extent wherein it has been held that there is no reason to restrict the interpretation of 'officer holding inquiry' in Standing Order to mean only an officer of petitioner-company and not outsider.

24. Moreover, the plea taken by the management that after dismissal, the workman is gainfully employed with some other security agency stands proved from the cross-examination of AW1 Rajinder Singh wherein he has stated that after dismissal from this company he worked with Vibracaustice Pvt. Ltd., Industrial Area, Phase - VII, Mohali for about two months but he does not remember the specific date of his service. AW1 in his cross-examination further stated that thereafter he worked with security agency. AW1 denied the suggestion for want of knowledge if he had worked in the security agency namely Sliver Star Industrial & Allied Services, Sector 22, Chandigarh. To my opinion, the denial for want of knowledge of the fact that the workman had worked in the security agency namely Sliver Star Industrial & Allied Services, Sector 22, Chandigarh is not acceptable because under the law, the fact which is not specifically denied is deemed to be admitted.

25. In view of the discussion made above, it is duly proved on record that the domestic inquiry conducted against the workman is legal, proper, fair and well in accordance with the Certified Standing Orders of the management and as per the principles of natural justice. The sufficiency or insufficiency of evidence is not to be looked into by this Court / Tribunal as the Court will not sit as an appellate authority over the findings of the Inquiry Officer and will not re-evaluate the evidence adduced in the inquiry proceedings. To such circumstances the case law referred by Learned Representative for the management titled as **State Bank of Bikaner & Jaipur Versus Nemi Chand Nalwaya reported in 2011(4) SCC 584** is applicable to the facts of the present case to an extent wherein it is held that the Court will not act as an appellate court and reassess the evidence led in the domestic inquiry nor interfere on the ground that another view is possible on the material on record. When the inquiry is fairly and properly held and the findings are based on evidence, the question of adequacy of evidence will not be the ground for interference.

26. Accordingly, issue No.1 is decided against the workman and in favour of the management whereas issue No.1-A is decided in favour of the management and against the workman.

Relief :

27. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 16th February, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 29th March, 2023

No. 13/1/9957-HII(2)-2023/4365.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 4/2019 dated 22.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

GULSON KUMAR S/O SH. TARA CHAND, R/O HOUSE NO. 626, WARD NO.11,
DERA BASSI, DISTRICT MOHALI. (Workman)

AND

1. M/S ADECCO INDIA PRIVATE LIMITED THROUGH ITS MANAGING DIRECTOR, CORPORATE OFFICE-2, NAL WIND TUNEL ROAD, MURUGESHPALYA, BANGALORE - 156017
2. THE REGIONAL MANAGER, M/S ADECCO INDIA PRIVATE LIMITED, BRANCH OFFICE, SCO NO. 21-22, 1ST FLOOR ABOVE STATE BANK OF INDIA, SECTOR 19-C, CHANDIGARH - 160019.
3. SAMSUNG INDIA ELECTRONICS PRIVATE LIMITED, THROUGH ITS MANAGING DIRECTOR, 20TH TO 24TH FLOOR, TWO HORIZON CENTRE, GOLF COURSE ROAD, SECTOR 43, GURUGRAM - 122002. (Management)

AWARD

1. Gulson Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman is an 'industrial workman'. The workman was appointed as SEC-2 *vide* offer letter dated 01.10.2015 by the management No.1 & 2 i.e. Adecco India Private Limited for the monthly CTC of ₹ 21,368/-. The workman joined on the very same date i.e. 01.10.2015 as SEC-2 with management No.1 & 2. The workman was deputed by management No. 1 & 2 for the disposal of its client i.e. Samsung India Electronics Private Limited at Chandigarh. The workman was allotted the place of posting at a shop namely Cute Corner, an authorised distributor / sale office of Samsung India Electronics Private Limited, located at Sector 17, Chandigarh i.e. management No. 3. Management No.2 issued a letter of employment dated 06.11.2015 according to which the employment of the workman in the company was for the period w.e.f. 01.10.2015 to 30.09.2016. Later on the terms of employment of the workman was extended by the company. *Vide* letter dated 10.10.2017 the salary structure of the workman was revised w.e.f. 01.08.2017 and the workman was promoted as SEC BAND 4. As per the revised structure, his monthly CTC was ₹ 27,320/-. During the period of employment the workman worked with management No.1 & 2 company and performed the task as given by the company to its complete satisfaction with honesty and sincerity. The workman always achieved the target given by the company from his hard work and honesty. Despite being innocent, he has been terminated from service on 06.11.2017 in an illegal manner and he has been made un-employed. The termination order dated 06.11.2017 was conveyed to the workman through email by management No.1 & 2 company. At the time of termination the last pay salary of the workman was ₹ 27,320/- per month. While terminating the workman, the management No.1 & 2 leveled false allegations against the workman of being involved in dual employment. The workman was never involved in any other employment except the employment of his employer / management No.1 & 2 during the period he was employed by management No.1 & 2 / Adecco India Private Limited. Before termination of services of the workman, he was not given any opportunity to defend himself as per the principles of natural justice. Neither he was issued any charge sheet nor any domestic inquiry was held. Even show cause notice was also not issued therefore termination of the workman comes under the provisions of retrenchment. Before

terminating the workman, 'last come first go' principle was not followed. The employees junior to the workman were retained in service but the workman was terminated. In this way, the management No.1 & 2 had violated the Section 25-G of the ID Act. After termination of the workman, the new employees are being employed and the workman was not given any opportunity to take him back on duty. In this way, the management has violated provisions of Section 25-H of the ID Act. Besides, termination of the workman from the service is against the principles of natural justice and comes under unfair labour practice. After termination by management No. 1 & 2, the workman raised demand notice dated 20.11.2017 to management No.1 & 2 and its copy was submitted to the Hon'ble Labour-cum-Conciliation Officer, U.T. Chandigarh. In pursuance to the demand notice dated 20.11.2017 conciliation proceedings were initiated between the workman and management No.1 & 2 before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. However, adamant attitude of management No.1 & 2, the dispute between the parties could not reach to an amicable settlement. Hence, the conciliation proceedings failed. Thereafter, the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh issued a certificate to the workman on 25.05.2018 with liberty to proceed further as per provisions of Section 2-A(2) of the ID Act. This Industrial Tribunal-cum-Labour Court has jurisdiction to adjudicate in the present case. The present claim statement has been filed within the limitation as prescribed in the statute. Prayer is made that the claim statement may be accepted and the termination order against the workman may be quashed and set aside. The managements may be directed to reinstate the workman with full back wages and consequential benefits.

2. On notice, management No. 1 & 2 appeared through representative Shri Kamaljit Rana and contested the claim statement by filing joint written reply wherein preliminary objection is raised on the ground that the workman has not approached with clean hands and has not disclosed true facts before this Court. Therefore, statement of claim may be dismissed.

3. Further on merits, it is admitted as correct that management No.1 terminated the workman from his services as the management No.1 through email written that the workman has not followed the terms & conditions of the appointment letter. The workman is involved in a dual (double) employment which has affected the business and against the company's protocol. The workman was working at Cute Corner Sector 17 with Samsung Company. After inquiry the management No.1 & 2 came to know that the workman was also working in Vivo under Shop Boy project of Vivo. The workman had used the documents of his cousin namely Hemlata for joining in Vivo. The workman was warned to clarify about his double employment and the workman agreed all these facts with his seniors. The conversation between the workman and senior is with the management No.1. It is not disputed that the workman was appointed by the management No.1 on 06.11.2015 as SEC BAND 2 on contract basis. The workman was deputed with management No.3 by the management No. 1. The fact that *vide* letter dated 10.10.2017 the salary structure of the workman was revised is admitted as true and correct. The management No. 3, where the workman was deputed by the management No.1, through mail written that the workman had not followed the terms & conditions of the appointment letter. The workman is involved in dual (double) employment which had affected the business and against the company's protocol. The workman was working at Cute Corner, Sector 17 with Samsung company. After inquiry the company came to know the workman was also working in Vivo under Shop Boy project of Vivo. The workman has used the documents of his cousin Hemlata for joining in Vivo. The workman was warned to clarify about his double employment and the workman agreed all these facts with his senior. There was direct communication between the workman and the senior, therefore, there was no need for sending any notice or to conduct any domestic inquiry. The workman had not been performing his duties sincerely and cheated the management for money. It is admitted as correct that the workman submitted demand notice to the answering management. It is further admitted as correct that the management No.1 & 2 appeared in the conciliation proceedings before ALC, Chandigarh. Rest of the contents of the claim statement are denied and wrong and prayer is made that the claim statement may be dismissed with costs.

4. The workman raised demand notice under Section 2-A to the Managing Director office at Bangalore and Branch Manager office at Chandigarh of M/s Adecco India Private Limited. The conciliation proceedings relating to the demand notice failed, thus *vide* Memo No.2059 dated 25.05.2018 the conciliation proceedings were closed by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and the workman was advised that he may proceed further as per Section 2-A(2) of the ID Act. The workman filed the claim statement against the Managing Director and Branch Manager of M/s Adecco India Private Limited and also

against Samsung India Electronics Private Limited by impleading the same as management No.3 whereas the demand notice was not raised against the management No.3.

5. On 14.12.2022 Learned Representative for the workman got recorded his statement to the effect that he do not press claim statement qua management No.3. Accordingly, vide order dated 14.12.2022 the claim qua management No.3 was disposed off being not pressed.

6. Rejoinder to the written reply of management No.1 & 2 was filed on 23.12.2019. From the pleadings of the parties, following issues were framed *vide* order dated 23.12.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

7. In evidence the workman Gulson Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'A1' to Exhibit 'A4', Mark 'A' and Mark 'B'. The original of Exhibit 'A1' to Exhibit 'A4' were produced at the time of recording evidence, which were seen and returned.

Exhibit 'A1' is copy of office advice issued to the workman Gulson Kumar whereby Adecco India Private Limited offered appointment as SEC - 2 on deputation to their client Samsung India Electronics Private Limited at Chandigarh location on fixed term contract for the monthly CTC 21638/-. The offer advice also includes the standard terms of employment.

Exhibit 'A2' is copy of letter of employment dated 06.11.2015 issued by Adecco India Private Limited to Gulson Kumar for employment in their organisation Adecco India Private Limited as SEC BAND 2 for a fixed period of employment (contract) valid from 01.10.2015 to 30.09.2016 with direction to the workman to report to work on 01.10.2015 at 9:00 A.M. at Samsung India Electronics Private Limited, Chandigarh.

Exhibit 'A3' is copy of Salary Revision / Band promotion letter dated 10.10.2017 issued to Gulson Kumar by Adecco India Private Limited whereby his salary structure was revised w.e.f. 01.08.2017 and he had been promoted to SEC BAND 4 and his revised CTC was INR 27,320.

Exhibit 'A4' is copy of failure report bearing Memo No.2059 dated 25.05.2018 issued by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh to Gulson Kumar.

Mark 'A' is hard copy of email dated 06.11.2017 at 5:08 P.M. issued from Adecco Group India to Gulson Kumar wherein it is mentioned that Gulson Kumar has been found involved in dual employment which has affected the business and is against the company protocol and the above omission on his part constitute a serious misconduct. In view of the above, the management decided to terminate his services with immediate effect.

Mark 'B' is copy of demand notice under Section 2-A of the ID Act.

On 18.04.2022 Learned Representative for the workman closed the evidence.

8. On the other hand, management examined MW1 Raj Wadhwa - Assistant Manager (Legal & Compliance), M/s Adecco India Private Limited & others who tendered his affidavit Exhibit 'MW1/A'. During cross-examination MW1 placed on record copy of authority letter dated 29.07.2022 whereby he was authorised to appear and depose in this case by the Director on behalf of the management *vide* Mark 'X'.

9. On 12.12.2022 Shri Raj Wadhwa filed authority letter dated 29.07.2022 issued by Adecco India Private Limited in his favour and moved an application to adduce additional evidence by re-examining himself. In view of the no objection raised by Learned Representative for the workman the said application was allowed. In additional evidence, MW1 Raj Wadhwa tendered compact disc (CD / DVD)vide Exhibit 'MO1' along with his certificate under Section 65-B of the Evidence Act *vide* Exhibit 'M1' supported with an affidavit Exhibit 'M2' and authority letter dated 29.07.2022 in his favour *vide* Exhibit 'M3'. On 12.12.2022 Shri Raj Wadhwa closed evidence on behalf management No.1 & 2.

10. It is pertinent to mention here that on 14.12.2022 Learned Representative for management No.1 & 2 moved an application seeking to recall the workman for further cross-examination to which Learned Representative for the workman raised no objection *vide* his statement dated 18.01.2023. *Vide* order dated 18.01.2023 the application dated 14.12.2022 for further cross-examination of AW1 Gulson Kumar was allowed. Further cross-examination of AW1 Gulson Kumar was recorded on 24.01.2023.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

12. Onus to prove this issue was on the workman.

13. In order to prove his case the workman Gulson Kumar examined himself as AW1 and *vide* his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with documents Exhibit 'A1' to Exhibit 'A4' and Mark 'A' and Mark 'B'.

14. On the other hand, management No. 1 & 2 examined MW1 Raj Wadhwa - Assistant Manager (Legal & Compliance), M/s Adecco India Private Limited, who *vide* his affidavit Exhibit 'MW1/A' deposed that the management No.1 terminated the workman from his service as the management No.3 where the workman was deputed by the management No.1, through mail written that the workman has not followed the terms & conditions of the appointment letter. The workman is involved in dual (double) employment which has affected the business and against the company protocol. The workman was working at Cute Corner, Sector 17 with Samsung company. After inquiry the company came to know the workman was also working in Vivo under Shop Boy project of Vivo. The workman has used the documents of his cousin Hemlata for joining in Vivo. The workman was warned to clarify about his double employment and the workman agreed all these facts with his senior. The workman was appointed by the management No.1 on 06.11.2015 as SEC BAND 2 on contract basis. There is no role of management No.2 in this case. MW1 in additional evidence tendered CD / DVD Exhibit 'MO1' and documents Exhibit 'M1' to Exhibit 'M3'.

15. From the oral as well documentary evidence led by the parties, it comes out that undisputedly M/s Adecco India Private Limited appointed workman Gulson Kumar *vide* offer advice / Exhibit 'A1' w.e.f. 01.10.2015 as SEC 2 for deputing him to its client Samsung India Electronics Private Limited at Chandigarh location. The workman joined on 01.10.2015 as SEC 2 with the M/s Adecco India Private Limited for the monthly CTC of ₹ 21,638/-. Admittedly, M/s Adecco India Private Limited issued letter of appointment dated 06.10.2015 / Exhibit 'A2' to the workman for his employment in their company for the period w.e.f. 01.10.2015 to 30.09.2016. Further the fact remained admitted between the parties that *vide* letter dated 10.10.2017 / Exhibit 'A3'. The salary structure of the workman was revised w.e.f. 01.08.2017 and the workman was promoted as SEC BAND 4. As per the revised structure of salary his monthly CTC was ₹ 27,320/-. In this regard MW1 Raj Wadhwa in his cross-examination admitted as correct that the workman was appointed as SEC - 2 by the management No.1 & 2.

16. The workman has alleged that he was illegally terminated from his services on 06.11.2017 and the termination order was conveyed to him by the company through email Mark 'A'. On the other hand, the management has not disputed the fact that the services of the workman were terminated on 06.11.2017. MW1 in his cross-examination admitted as correct that the management No.1 & 2 has terminated the services of the workman. The management has alleged that the termination order was conveyed to the workman through email as well registered post. In this regard, MW1 in his cross-examination stated that the workman was informed about the termination of the services through registered post as well as through email dated 06.11.2017. To my opinion, the plea taken by the management that the workman was communicated the termination through registered post as well does not stand proved because no such plea is taken in the written reply jointly filed by management No.1 & 2. Therefore, the management's plea of communicating the termination order to the workman through registered post is not admissible into evidence being beyond pleadings. Moreover,

no postal receipt is placed on record to show the issuance of registered post to the workman. As far as the management's plea that the workman was informed about the termination order through email is concerned, no such fact is deposed by MW1 in his affidavit Exhibit 'MW1/A'. In cross-examination MW1 admitted as correct that the fact regarding informing the workman regarding termination of services of the workman by way of email dated 06.11.2017 has not been stated anywhere in his affidavit dated 29.07.2022. Although the management failed to prove communication of termination order dated 06.11.2017 to the workman but the workman has not disputed the fact that he was informed about the termination order dated 06.11.2017 through email Mark 'A'.

17. As far as legality of termination order dated 06.11.2017 is concerned, Learned Representative for the management contended that the workman was involved in dual (double) employment which is contrary to the standard terms of employment of M/s Adecco India Private Limited, therefore, on account of breach of terms & conditions of the appointment letter the workman was terminated from service w.e.f. 06.11.2017. On the other hand, the workman has denied his involvement in dual employment. To my opinion though the management had pleaded that the workman was terminated on the ground of dual employment with Vivo but the management has failed to prove the same. In cross-examination MW1 stated that he does not remember under which company or under whom the workman was involved in dual employment. MW1 voluntarily stated that the workman was involved in dual employment with Vivo. MW1 admitted as correct that in Mark 'A' the management has written about termination of the workman on the ground of dual employment with Vivo. MW1 further stated that the reporting Manager of management No.3 has confirmed about the dual employment of the workman with Vivo. MW1 in his cross-examination admitted as correct that the aforesaid fact that the Reporting Manager of management No.3 has confirmed about dual employment of the workman with Vivo has not been stated anywhere in reply or in affidavit dated 29.08.2022. The version of MW1 that reporting Manager of the management No.1 confirmed about the dual employment of the workman with Vivo is beyond pleadings and thus, not admissible into evidence. Besides, there is no written report of the Manager of the management No.3 whereby it has reported to the management No.1 & 2 about the dual employment of the workman with Vivo. MW1 in his cross-examination admitted as correct that management No.1 & 2 do not have any evidence regarding dual employment of the workman other than the recording between the workman and his reporting Manager. Learned Representative for the management referred CD Exhibit 'MO1' and contended that it contains the conversation between the workman and his reporting Manager wherein the workman has admitted his dual employment. To authenticate the contents of CD Learned Representative for the management referred the certificate of MW1 Raj Wadhwa under Section 65-B of the Evidence Act i.e. Exhibit 'M1' wherein he has certified that recording of the conversation took place between the workman Gulson Kumar *vide* mobile No.8728069235 and his team leader Mr. Jatin Kumar *vide* Mobile No.7837621959 and that the information in the form of DVD was recorded by Mr. Jatin Kumar Rajput in his mobile and later on Jatin Kumar Rajput sent it to the management on the email id and the original recording is in the laptop. It is further certified that the information contained in the DVD in electronic record is reproduced and is derived from the email id. / laptop kept in the office and the access to the system i.e. laptop and data stored thereon is controlled by defined authorised roles exercise through unique user id. and the associated password. Only the concerned user knows the password. The use of id. with password establish his identity and accountability,. It is further certified that the laptop is operated properly and regularly ever since the information is available in it. Learned Representative for the management also referred to an affidavit Exhibit 'M2' of MW1 Raj Wadhwa which is filed in support of his certificate under Section 65-B of the Evidence Act. Learned Representative for the workman objected to Exhibit 'MO1' and Exhibit 'M1' to 'M3' on the ground of mode of proof and admissibility, when the same were tendered into evidence and the said objection was kept open to be decided at the time of arguments.

18. To my opinion as far as admissibility of CD / DVD Exhibit 'MO1' containing voice recording is concerned, the amended definition of 'evidence' in Section 3 of the Evidence Act read with the definition of 'electronic record' in Section 2(1)(t) of The Information Technology Act include a compact disc / DVD. Therefore, upon filing a certificate under Section 65-B, a CD / DVD is admissible in evidence. The CD / DVD i.e. Exhibit 'MO1' was played on the computer during further cross-examination of AW1 Gulson Kumar recorded on 01.02.2023 and it was found that it had no contents of voice recording except written coding / configuration. Thus, AW1 in his cross-examination stated that he is not able to comment on the contents of the DVD played today in the Court as it has no content of voice recording. From the cross-examination of AW1

Gulson Kumar referred above, the management failed to prove the contents of the CD / DVD. Moreover, the management did not place on record the transcription of the alleged voice / audio recording, in order to understand what was said or happened over the time. The management failed to prove the alleged conversation between the workman and Shri Jatin Kumar Rajput whereby the workman admitted his dual employment. MW1 in his cross-examination admitted as correct that the management No.1 & 2 had not confirmed from the Vivo regarding dual employment of the workman with Vivo. The management has alleged that the workman was warned to clarify about his double employment and the workman agreed all these facts with his seniors. To my opinion the aforesaid plea of management does not stand proved because neither any alleged Senior Officer is named in the written reply nor examined in the witness box. The workman / AW1 in his cross-examination has stated that Ms. Hemlata is his wife and at that time she was working with him at the same store i.e. store of multiple mobile store. She was working in Vivo India Private Limited. On 06.11.2017 his wife was present at the above mentioned store. The store of the Vivo company and Samsung company were same at that time. AW1 admitted as correct that he talked to his seniors about dual employment and one Jatin Rajput along with 3 persons namely Shri Saurav Nayak (ABM), Shri A. K. Kohli (Samsung Distributor), Rupinder Singh (Unicom, Sector 17, Chandigarh) came to his store and verified the facts regarding dual employment. He told them all about his job and thereafter they returned. AW1 denied the suggestion as wrong that he ever joined as dual service in the company. AW1 denied the suggestion as wrong that he was doing the job of his wife in the above mentioned store as the store of Vivo and Samsung were same. To my opinion the suggestion put to the witness which is denied as wrong is no evidence unless proved otherwise. As discussed above, in the present case the management failed to lead evidence to prove the fact that the workman was engaged in dual employment.

19. From the discussion made above, it is duly proved on record that the workman remained in service of management No.1 & 2 w.e.f. 01.10.2015 to 06.11.2017. The workman has completed 240 days of service during the preceding 12 months. Thus, the workman falls within the definition of Section 2(s) of the ID Act. In cross-examination MW1 Raj Wadhwa admitted as correct that no show cause notice was ever issued to the workman by the management No.1 & 2 regarding termination. From the aforesaid version of MW1 it is duly proved on record that before terminating the workman from the job the management No.1 & 2 did not comply with Section 25-F of the ID Act. Consequently, the termination of the workman is illegal. However, no evidence has come on record that contract of M/s Adecco India Private Limited with its client Samsung India Electronic Pvt. Ltd. still exists. Besides, the relations of the workman are strained with his employer M/s Adecco India Private Limited, therefore, it would not be in the interest of workman to reinstate him with M/s Adecco India Private Limited. Keeping in view the fact that termination of workman is illegal, and the workman is held entitled to lump sum compensation of ₹ 1,00,000/-.

20. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

21. In the view of foregoing finding on the issue above, this industrial dispute is partly allowed to the effect that the workman is entitled to lump sum compensation of ₹ 1,00,000/- to be paid by management No.1 & 2 within three months from the date of publication of this award in Government Gazette failing which the management Nos.1 & 2 are liable to pay interest at the rate 8% per annum on the above said amount from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

The 22nd February, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 29th March, 2023

No. 13/1/9955-HII(2)-2023/4367.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 44/2018 dated 13.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DALBIR S/O SHRI BASANT LAL, R/O HOUSE NO. 30, MADHO COLONY, KHUDAALISHER, UT, CHANDIGARH. (Workman)

AND

1. CHIEF ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
2. SUPERINTENDING ENGINEER, PUBLIC HEALTH, UT, SECTOR 9, CHANDIGARH.
3. EXECUTIVE ENGINEER, PUBLIC HEALTH, DIVISION NO.8, SECTOR 9, CHANDIGARH.
4. SUB DIVISIONAL ENGINEER, PUBLIC HEALTH, SUB DIVISION NO. 4, SECTOR 9, CHANDIGARH.
5. M/S NOVA ENVIRO ENGINEERS, SCO NO. 117-118, FIRST FLOOR, SECTOR 17-B, CHANDIGARH THROUGH ITS AUTHORISED SIGNATORY (Management)

AWARD

1. Dalbir, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that he has been initially appointed on 10.02.2011 as Helper in AC Plant of Hon'ble High Court on contract basis, Chandigarh with the managements. No DC rate wages were paid to the workman and only ₹ 2,500/- per month was given in the year 2011. The last wages of the workman were ₹ 11,578/- per month including EPF amount (₹10,180/-+ EPF ₹ 1,398/- = ₹11,578/-). The above said amount was paid to the workman in cash till demonetization and thereafter through cheque. Management Nos. 1 to 4 has outsourced the employment of the Helper AC Plant and the contract was given to management No.5. The minimum wages for the year 2016-2017 of Helper AC Plant was ₹12,747/- per month but the management did not pay full wages after statutory deduction from the wages of the workman as the workman was paid ₹11,578/- per month whereas, it comes to ₹12,747/- per month. The workman was paid ₹1,169/- less from 01.04.2016 till 27.10.2017 and paid ₹11,690/- less for the month of April, 2017. Further arrears of the DC rate wages, increased from time to time, from the year 2011 till 27.10.2017 has not been paid to the workman and the same is due against the managements. Management No.5 got the cheques of arrears signed from the workman for having bill clearance from the managements No.1 to 4 but the said amount was never paid to the workman. The workman is under Matric. The services of the workman have been terminated illegally by the managements *vide* verbal order dated 27.10.2017 (afternoon) on the ground that one employee namely Ram Chand has sought information regarding how many employees engaged in the AC Plant and Fire Pump House situated in Hon'ble High Court of Punjab & Haryana and whether the employees are paid DC rates or other rate etc. But no information in this regard was supplied and then the said employee has filed an appeal before the First Appellate Authority. Due to this the managements have become revengeful and terminated the services of the workman *vide* verbal order dated 27.10.2017 (afternoon) in spite of the fact that his work & conduct is satisfactory. The action of the management is illegal and against the law. The workman had completed more than 240 days continuously and regularly with the management. The management has neither issued one month's notice in writing nor paid retrenchment compensation and wages in lieu of notice period. No notice in the prescribed manner has been served on the

appropriate Government. The action of the managements is in violation to the provisions of Section 25-F of the ID Act. The management has appointed / engaged fresh workmen after the termination of services of the workman. The managements have violated the provisions of Section 25-H of the ID Act. Further the managements are playing unfair labour practice whereas, some of the employees are working at AC Plant in Sector 16 Hospital and their wages are paid against the AC Plant situated in Hon'ble High Court of Punjab & Haryana under the supervision of the managements. The services of the workman have been terminated illegally without following the law. Hence, the workman is entitled for reinstatement into service along with full back wages and all consequential benefits. The management has not maintained the seniority list of workmen as required under Section 77 of the ID Act which is also in clear violation of rules. The management has not followed the principles of 'first come last go' at the time of termination of services of the workman. The managements have also retained the juniors to the workman i.e. Manoj presently at AC Plant Sector 16 Hospital and other junior Helpers have also been retained in service which is violation of Section 25-G of the ID Act. Thus, the workman has been discriminated. The workman approached the managements No.1 to 3 not to terminate the services of the workman on 26.10.2017 but the managements refused for the same and thereafter, another application was given to management No.1 on 12.12.2017 for reinstatement and continuation of service of the workman but all in vain. Hence, the managements are responsible for illegal termination of workman and the managements have not paid gratuity, leave encashment, bonus, etc. to the workman. Neither managements No.1 to 4 have been registered with the Labour Department nor the contractor i.e. Management No.5 has obtained license from the Labour Department, U.T. Chandigarh for engagement of outsourcing employees. Hence, the workman is an employee of managements No.1 to 4. The verbal order dated 27.10.2017 of the management *vide* which services of the workman had been terminated is illegal, arbitrary, mala fide, against service rules, against principle of natural justice, and is also against the mandatory provisions of the ID Act and hence, being null and void, is not binding on the workman. The workman has earlier served demand notice upon the managements No.1 to 5 seeking reinstatement with continuity of service, back wages and all other benefits and payment of arrears etc. The conciliation proceedings before the ALC, Chandigarh failed and the workman was advised *vide* memo No.1483 dated 16.04.2018 to proceed further in the matter as per Sub Section 2A(2) of the Industrial Disputes (Amendment) Act, 2010. Prayer is made that illegal termination of the services of the workman dated 27.10.2017 may be set aside and the workman may be ordered to be reinstated in the services with continuity of service and with full back wages etc. Further the managements may be directed to pay the arrears of ₹11,690/- less payment of wages from April, 2017 to 27.10.2017 and further arrears of increased DC rate w.e.f. April, 2012 to 31.03.2017 to the workman along with 24% interest from the due date till its payment.

2. On notice, management Nos.1 to 4 appeared through its Law Officer and contested the claim of the workman by filing written statement on 10.07.2018, wherein preliminary objection is raised on the ground that the workman has not approached this Tribunal with clean hands as he has already approached the Hon'ble Central Administrative Tribunal for redressal of his same grievance for which he approached this Tribunal.

3. Further in preliminary submissions it is pleaded that the Public Health Wing of the Chandigarh Administration is functioning under the overall control of Chief Engineer, who is assisted by the Superintending Engineer and is further assisted by number of Executive Engineers with the assistance of various Sub Division Engineer in respect of their respective sub divisions. The Public Health Division No. 8, Sector- 9, Chandigarh through its Executive Engineer had entered into a contract with M/s. Nova Enviro Engineers, SCO No. 117-118, First Floor, Sector- 17-B, Chandigarh for running and maintenance of AC Plant at the Hon'ble High Court of Punjab and Haryana, Chandigarh vide No. 9165 dated 14.09.2016 for a period of 12 months. The term of the contract was from 16.09.2016 to 15.09.2017 and thereafter the same was extended up to 27.10.2017 with the mutual consent of both the parties. Thereafter, the contract agreement came to an end with an efflux of time. As per the terms & conditions of the contract agreement, the contractor M/s. Nova Enviro Engineers has to make establishment of Helpers and other workers /staff for the smooth functioning of the AC Plant besides fulfillment of the term & conditions of the contract. There is no relationship between the department and any of the Workman or Contractor because the relationship is between the contractor and the department that too up to the contract period. Once the contract had come to an end with

an efflux of time, there remains no relationship of the any sort even with the Contractor. The answering managements have already entered into fresh contract agreement for the running and maintenance of AC Plant of Hon'ble High Court of Punjab and Haryana at Chandigarh effective on 01.12.2017 for the period of the one year *vide* this office memo no.10014 dated 28.11.2017 and the said Contractor is working accordingly till date by engaging appropriate number of Helpers/Workman as per the Contract agreement.

4. On merits, it is stated that the contract agreement was entered into between management No. 3 and management No. 5 for running of maintenance of AC Plant in Hon'ble High Court of Punjab and Haryana at Chandigarh. As per the prevalent practice during the contract period, the wages as per the applicable date were to be paid by the contractor and intimation thereof is to be given to the answering managements. Accordingly, the contractor after making the payments had furnished the photo copy of the cheques to the answering managements *vide* which the payments were made. Since there is no relationship of any sort between the answering managements and any of the workman of the contractor, therefore, no question arises for termination of service of workman in any manner by the answering managements, as alleged, by the verbal order dated 27.10.2017. The contract agreement entered into between the management No. 3 and management No. 5 on behalf of the Public Health Department had came to an end with an efflux of time on 27.10.2017. The answering managements had not violated the provision of section 25-F of the ID Act as the service of workman was not terminated by the answering managements. The answering managements have not appointed any fresh workman. It has floated tender for the maintenance of running of AC Plant and the contractor had been selected on the basis of the bid quoted by him. Further it is for the contractor concerned to engage appropriate number of Workman / Helpers / Operators for doing the assigned job as per the terms & condition of the contract agreement which is for the period from 01.12.2017 to 30.11.2018. Some of the workmen by introducing themselves to be workman Helpers of management No. 5 had attended the office of the answering managements with a request not to relieve them from job. However, they were also made aware that the contract agreement of their Contractor had came into an end with an efflux of time on 27.10.2017 and the Department had already initiated the process for tendering the contract afresh. So far as letter dated 12.12.2017 to reinstatement is concerned, the answering managements had filed the same for the reasons that they could not take any decision in the said regard for the simple reason that the Helpers / workman engaged by the contractor were neither engaged with the consent of the department nor shuffled /relieved with the approval and knowledge of the department. It is not within the purview of the department to take any decision with respect of any of the Workman / Helpers of the contractor as the answering managements are merely concerned with the fulfillment of the terms & conditions of the contract agreement by the then contractor whose agreement came to an end on 27.10.2017 with an efflux of time. There is no requirement for the answering managements to get itself registered with the Labour Department and likewise the then contractor had engaged workmen less than 20 in numbers, therefore, he was not required to get himself registered. No such alleged or verbal order dated 27.10.2017 was ever issued by the answering managements. The fact of receiving summons from the A.L.C. is admitted being matter of record. Further the proceedings initiated before the A.L.C. were attended and the decision approved by the Learned ALC needs no comments from the answering managements. Other averments of the claim statement are denied for want of knowledge. Prayer is made that the claim of the workman may be dismissed.

5. On notice, management No.5 appeared through its authorised representative and contested the claim of the workman by filing written statement on 10.09.2018, wherein preliminary objections are raised on the ground that the present reference is not maintainable being without jurisdiction and it does not fall within the ambit of Section 2-A of the ID Act. Besides, the answering management has never terminated the services of the workman. In fact, the workman has voluntarily left the job and accepted the amount paid by the answering management. The workman does not fall within the purview of Section 2(s) of the ID Act. As a person, who voluntarily left the job at his own and accepted all the payments made by the management arising out of such voluntarily leaving the job cannot be treated as a workman. The contract of the answering management with management No.3 has come to an end on 27.10.2011. Question of short / less payment is not covered under the present reference. The claim of the workman is false and frivolous being filed with ulterior motive to take undue advantage, harass and humiliate the answering management by abusing the process of law.

The answering management employed / deputed the workman as per the guidelines and requirements of the principal employer. The present reference does not fall within the ambit of Section 25-F of the ID Act as the workman has never completed 240 days with the answering management in any calendar year preceding to the date of his voluntarily leaving the job.

6. On merits, it is admitted that the workman had joined the answering management on 10.02.2011 as Helper on contract basis and his last wages were ₹ 11,803/- per month. The management Nos. 1 to 4 has outsourced the employment of the Helper AC plant and the contract was given to the answering management. The answering management had not paid the increase rate of wages for the period 01.04.2016 till 27.10.2017 as the answering management has not received the same from the management No.3 and as & when management No.3 will release the same, it will be paid to the workman. The answering management has not obtained license from the Labour Department, U.T. Chandigarh as the answering management has deployed less than 20 workmen. The answering management has not terminated the services of the workman rather the workman has voluntarily left the services with the answering management. Rest of the averments of the claim application are denied being wrong. Prayer is made that the claim of the workman may be dismissed.

7. Replication to written statement of management No.1 to 4 not filed. The workman filed replication to written statement of management No.5, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

8. From the pleadings of the parties, following issues were framed *vide* order dated 09.07.2019 :—

Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Whether there is no employer-employee relationship between management No.1 to 4 and workman ? OPM-1 to 4

3. Relief.

9. In evidence, the workman Dalbir examined himself as AW1.

10. During the pendency of the present industrial, the parties settled their dispute amicably. Learned Representative for management No.5 got recorded his statement, which is reproduced as below :—

"Stated that the management is ready to settle the dispute with the workman and to pay the workman Rs.10,000/- (in cash) towards full & final settlement of his claim i.e. right of reinstatement."

11. The workman also got recorded his statement, which is reproduced as below :—

"I have heard the statement of Learned Representative for management No.5 and ready to settle my claim with the management and receive the offered amount towards full & final settlement of my claim i.e. right of reinstatement. My present industrial dispute may kindly be disposed off accordingly."

12. Heard. In the view of above statements of the parties, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

The 13th February, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 29th March, 2023

No. 13/1/9949-HII(2)-2023/4369.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 112/2018 dated 27.01.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SONU KUMAR S/O SHRI HOUSHIAR SINGH R/O H.NO. 1900, SECTOR 25-D,
CHANDIGARH (Workman)

AND

1. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO 181-182, 1ST FLOOR, SECTOR 8-C,
CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY.

2. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I, INDUSTRIAL AREA,
CHANDIGARH, THROUGH ITS FACTORY MANAGER. (Management)

AWARD

1. Sonu Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed as a Safai Karamchari (House Keeping) on 12.11.2005 by M/s Hawks Eye Security Services Pvt. Ltd. (*hereinafter referred as 'management No.1'*). The workman was deployed at the work place at M/s Groz Beckert Asia Pvt. Ltd. Industrial Area, Phase - I, Chandigarh (*hereinafter referred as 'management No.2'*). Hence, the workman is a 'workman' as defined under Section 2(s) of the ID Act. Management No.1 is the contractor and management No.2 is the principal employer where the workman worked as Safai Karamchari (House Keeping). The daily timings of the workman were from 7:00 A.M. to 4:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by both the managements. The workman was being paid ₹13,500/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹12,288/- per month by management No.2 through the contractor. The last drawn net salary of the workman is ₹12,288/- per month after the deductions mentioned above. Management No.2 paid ₹1,200/- on 18.10.2018 as Diwali Festival Sweets and also paid ₹3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all employees of management No.2. The workman was enjoying yearly increment given by management No. 2. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his service. On 01.04.2017 the workman reported for duty as usual. Anil Managal, official of management No.2 asked the workman to sign on a blank paper in the name of salary slip. Then, after one hour the official of management No.2 told the workman not to come on duty until called again. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of the sudden without following the mandatory procedure laid down under the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The junior employees than the workman have been retained in service in violation of provision of law by the managements. The Housekeeping and cleaning work is still going on as the same is regular work of the factory of management No.2. The workman has served in the factory of management No. 2 for continuous period from 12.11.2005 to 01.04.2017. The workman has completed 240 days in the 12 calendar months preceding his termination. On 25.09.2017 the workman lodged a complaint with Labour Inspector, U.T. Chandigarh for his reinstatement with continuity of service and full back wages but no amicable settlement could be made possible. During the proceedings before the Labour Inspector, management No.1 filed reply dated 11.12.2017 and claimed that its contract with management No.2 was terminated w.e.f. 28.02.2017

and falsely stated that the workman has resigned from his job. Thereafter, the workman submitted demand notice dated 02.04.2018 to the managements before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh. Both the managements submitted its reply dated 25.09.2018 and undated respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. The conciliation Officer vide letter bearing Memo No.6815 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act. During the pendency of the conciliation proceedings, management No.1 in order to create illusion sent ante dated notice under Section 2-A of the ID Act dated 03.04.2018, actually sent on 06.04.2018, to the workman asking him to join the duty. When the workman contacted the management No.1, he was told to work at some other place at a salary of ₹6,000/- which was much lower than his last paid salary of ₹13,500/-. The workman had made it clear to management No.1 that he is entitled to same wages as he was last paid and he would not work for lesser amount. However, no such offer was made by the management No.1 before the Conciliation Officer. Prayer is made that managements may be directed that the workman be reinstated into service with continuity of service, full back wages and all the benefits to which the workman is entitled under the provisions of law

2. On notice, management No.1 appeared through its representative Shri A. K. Bakshi and contested the claim statement by filing written statement on 11.02.2020, wherein preliminary objections are raised on the ground that the workman resigned from his post and *Safai Karamchari* at his own due to personal reasons and received his full & final settlement payment. The claim application have been filed to harass the management and to extract more money from them. The workman has also withdrawn his provident fund. Hence, as per settled law the workman has lost his lien on the job and estopped from raising the present dispute. The present claim statement is not maintainable. The workman has not approached with clean hands and suppressed the material facts from this Hon'ble Court. Hence, the workman is not entitled to any relief.

3. Further on merits, it is admitted to the extent that the workman was deployed in the house-keeping service in the establishment of management No. 2 by the answering management No.1 under a contract for service. It is admitted that management No.1 is contractor and management No. 2 is the principal employer where the workman worked as *Safai Karamchari* (House-keeping). The workman resigned at his own due to personal reasons and received his full & final payment. It is admitted to the extent that the workman made a complaint to the Labour Inspector and the answering management had filed its detailed reply with all the proofs with Labour Inspector. The reply filed by the management was accepted by the Labour Inspector and the workman was advised to withdraw his complaint. The workman raised a demand notice on 11.05.2018 despite the fact that he had himself resigned from the service and taken full & final settlement. The answering management still offered him a job at another place where the work was available but the worker was adamant to work at the premises of management No. 2 only and did not accept the offer of the answering management. It is denied that the workman was offered salary of ₹ 6,000/- only. Rest of the averments of claim statement are denied as wrong and prayer is made that the statement of claim / reference may be dismissed with cost.

4. Management No. 2 appeared through its Representative Shri D. P. Sharma and contested the claim statement by filing the separate written statement on 07.06.2019 wherein preliminary objections are raised on the grounds that the person concerned was never in the employment of management No. 2. There was privity of contract between the concerned person and management No.2. As such no employer-employee relationship ever existed between them. Therefore, the question of appointment or termination of the concerned person by the management No.2 does not arise. The concerned person was employee of management No.1 (contractor), who is a licensed contractor under The Contract Labour (Regulation & Abolition) Act, 1970 (*hereinafter in short referred as '1970 Act'*). The concerned person was getting his monthly wages from management No.1 (contractor). Management No.1 is covered under The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (*hereinafter in short referred as '1952 Act'*) and Employees State Insurance Act, 1948 (*hereinafter in short referred as '1948 Act'*) having EPF Code PBCHD0012070000 and ESI Code 17120364120011001 and the concerned person being an employee of the contractor was also covered under EPF and ESI having PF No.PB/12070/4253, UAN No.100360449235 and ESI No.1709484467 under the aforesaid EPF and ESI codes of the management No.1 (contractor). The concerned person has already withdrawn his EPF accumulation on the recommendations of his employer namely M/s Hawks Eye Security Services Pvt. Ltd. i.e. management No.1 as intimated by management No.1. Management No.2 has no role to play in the engagement and termination of services of the concerned person.

The concerned person used to work as per the instructions of Security Supervisor of management No.1. The work & conduct of the concerned person was supervised and controlled by the management No.1 through its Security Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law and needs to be dismissed on this ground itself. The concerned person was employed by the management No.1 and his services were regulated by the management No.1 in accordance with 1970 Act and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file claim under 1970 Act and Rules thereunder but not under the ID Act. The present claim statement / reference needs to be rejected on this ground also. From the written comments to the demand notice filed by management No.1 that the applicant had resigned due to his personal reasons and also received his full & final dues. The concerned person has also withdrawn his EPF accumulations on the recommendations of his employer i.e. management No. 1. The concerned person was offered alternate employment by the management No.1 which was not availed by the concerned person. Hence, the present claim statement / reference is not maintainable and therefore liable to be dismissed on this ground too. Since there was no employment of the person concerned with the management No.2 the question of termination and appointment of the concerned person by the management No. 2 does not arise. Hence, the present claim statement / reference seeking any relief from management No. 2 is bad in the eyes of law and liable to be dismissed on this score as well.

5. Further on merits, it is stated that the concerned person was employee of management No.1 (contractor) and he was deployed to work as *Safai Karamchari* (House-keeping) in the factory of management No.2 as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by the management No. 2. It is denied as wrong that the concerned person is a 'workman' as defined under Section 2(s) of the ID Act. Management No.2 being the principal employer is duly registered under the 1970 Act having registration No.PE/CL/UT/CHD/49 whereby management No.2 has been authorised to engage management No.1 as a contractor. Similarly, the management No.1 is a licensed contractor under 1970 Act having licence No.CI(UT)/CHD/239. It is denied that the work of the concerned person was controlled, supervised and assessed by the management No. 2. In fact, the work of the concerned person was controlled, supervised and assessed only by the management No.1. The concerned person was employee of management No.1 and therefore, it is the management No.1, who could confirm the rate of wages paid to the concerned person. It is denied as wrong that management No.2 has ever paid ₹ 1,200/- as Diwali Festival Sweets or ₹ 3,000/- in 2010 on the occasion of Golden Jubilee Celebration. In fact, management No.2 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payments from the management No. 1. It is denied for want of knowledge last drawn net salary of the workman was ₹12,288/-. It is denied that on 01.04.2017 the concerned person was called by Shri Anil Mangal, official of management No. 2 and he directed the concerned person not to come on duty from the next date and that he forced the concerned person to sign on some blank papers and that the concerned person refused for the same. The factual position, however, remains that the concerned person was never called by Shri Anil Mangal and he was never directed not to come on duty on the next day. He was never forced to sign on blank papers. It is denied as wrong that the services of the concerned person was illegally, arbitrarily and mala fide terminated by the management No.2. The concerned person was the employee of the management No.1. Hence, the management No.2 had no role to play in the appointment or termination of the services of the concerned person. Even otherwise Section 25-G of the ID Act is not attracted in the present case. It is noted from the written comments to the demand notice filed by the management No.1 that the applicant had resigned due to his personal reasons and also received his full & final dues. Further, it is admitted by the applicant that he was offered alternate employment by the management No.1 which was not availed by the concerned person. It is denied that the concerned person has served for continuous period as an employee of management No.2 from 12.11.2005 to 01.04.2017. The concerned person was the employee of management No. 1. The management No.1 had submitted its reply to the complaint of the applicant on 11.12.2017 wherein it was mentioned that the applicant was told to adjust with other clients but the applicant came to its office and resigned due to his personal reasons and received his full & final dues. The concerned person has also withdrawn his EPF accumulation on the recommendations of his employer i.e. management No.1. It is admitted to the extent that the applicant submitted demand notice dated 02.04.2018 for which the conciliation proceedings took place. The management No.2 and the management No.1 submitted replies to the demand notice. During conciliation alternate employment was offered to the applicant by the management No.1 but the applicant resigned due to his personal reasons and received his full & final dues from the management

No.1. Rest of the averments of claim statement are denied as wrong and prayer is made that statement of claim / reference may be dismissed with exemplary cost.

6. The workman on 04.09.2019 filed rejoinder to the written statement of management No.1 wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

7. Rejoinder to the written statement of management No.2 not filed.

8. From the pleadings of the parties, following issues were framed vide order dated 09.02.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between Management No.1 and workman ? OPM-2
3. Relief.

9. In evidence, the workman Sonu Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W3'.

Exhibit 'W1' is copy of reply dated 11.12.2017 filed Haws Eye Security Services Pvt. Ltd. to Labour Inspector Circle I & III, U.T. Sector 30, Chandigarh relating to the subject complaint received from Shri Sonu Kumar regarding non-payment of salary.

Exhibit 'W2' is reply dated 03.04.2018 submitted by Hawks Eye Security Services Pvt. Ltd. to Sonu Kumar relating to the subject demand notice under Section 2-A of the ID Act.

Exhibit 'W3' is the registered postal envelope addressed from Hawks Eye Security Pvt. Ltd. to Sonu Kumar S/o Hoshiyar Singh, House No.1900, Sector 25-D, U.T. Chandigarh along with original postal receipt dated 06.04.2018.

On 16.08.2022 Learned Representative for the workman closed evidence on behalf of the workman.

10. It is pertinent to mention here that during cross-examination of AW1 Sonu Kumar documents Exhibit 'M1' and Exhibit 'M2' were put to him by Shri A. K. Bakshi - Representative for management No.1.

Exhibit 'M1' is the original resignation letter dated 03.04.2017.

Exhibit 'M2' is the original receipt dated 05.04.2017 of full & final settlement.

11. On the other hand, management examined MW1 Ramesh Atwal - SSA O/o Regional Provident Fund Commissioner, Sector 17-D, Chandigarh, who brought into evidence letter dated 14.11.2022 pertaining to the settlement of the workman i.e. Sonu Kumar S/o Hoshier Singh, PF No.PB/CHD/12070/4253 vide Exhibit 'M3' and the documents pertains to the claim settlement of the workman consisting of page 1 to 16 vide Exhibit 'M4'. On 18.01.2023 Learned Representative for management No.1 closed the evidence. On 27.01.2023 Learned Representative for management No.2 closed the evidence.

12. I have heard arguments of Learned Representative for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No.1 & 2 :

13. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

14. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.2.

15. In order to prove its case the workman Sonu Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'. On the other hand, Learned Representative for management No.1 examined MW1 Ramesh Attwal, SSA, Office of Regional Provident Commissioner, Sector 17-D, Chandigarh, who deposed that he has brought the summoned record. The workman in the present case has withdrawn his Provident Fund on 27.07.2017. The workman has withdrawn his provident fund on account of leaving the employment of his employer, for which the workman filled up and submitted Form No. 19. He has not brought the Form No. 19 because the record beyond three years has been weeded out by the department. Office note to that effect is Mark 'A'. Form 19 is not used for withdrawal of advance against provident fund and it is filled only after the cessation of employment of the workman. He has brought a letter dated 14.11.2022 pertaining to the settlement of workman i.e. Sonu Kumar S/o Shri Hoshiar Singh PF No.PB/CHD/12070/4253 which is Exhibit 'M3'. He has also brought documents pertaining to the claim settlement of the workman and produce the same as Exhibit 'M4' containing page 1 to 16.

16. Management No.2 did not lead any evidence either oral or documentary.

17. From the oral as well as documentary evidence on record, it comes out that there is no dispute between the parties with regard to the facts that the management No.1 is licensed contractor under 1970 Act having licence No.CI/UT/CHD/239. Management No.2 is registered under 1970 Act having registration No.PE/CL/UT/CHD/49 whereby management No.2 has been authorised to engage management No.1 as contractor. Further there is no dispute between the parties with regard to the fact that the workman was appointed as *Safai Karamchari* (House-keeping) by management No.1 and was deployed to work as *Safai Karamchari* in the factory of management No.2. The workman has alleged that he was appointed by management No.1 on 12.11.2005. Management No.1 admitted this fact in para 1, on merits, of the written statement. Management No.2 in para No.1 on merits, in its written statement stated that the workman was deployed to work as *Safai Karamchari* in the factory of management No.2 as a contract labourer but did not mention the date of his joining in the factory of management No.2 and has taken the plea that his date of joining can not be confirmed by the management No. 2. The management No.2 did not lead any oral or documentary evidence to controvert the fact that the workman was deployed to work as *Safai Karamchari* in the factory of management No.2 w.e.f. 12.11.2005.

18. Learned Representative for management No.2 argued that there is no relationship of employer & employee between the management No.2 and the workman. Much stress is laid upon the fact by Learned Representative for management No.2 that there is no privity of contract between the workman and management No.2. The workman is a contract worker appointed by management No.1 and deployed to work at the factory of management No.2. Besides, the workman was getting his monthly wages from management No.1. The workman being an employee of the contractor / management No.1 was covered under the EPF and ESI codes of the contractor / management No.1. On the other hand, management No.1 / contractor in its written statement has admitted the fact that the workman was deployed by management No.1 in house-keeping services in the establishment of management No.2 under a contract for service. The aforesaid arguments advanced by Learned Representative for management No.2 stands proved from the cross-examination of AW1 Sonu Kumar / workman wherein he has admitted as correct that he was deployed as *Safai Karamchari* by the management No.1 in the factory premises of the management No.2. AW1 admitted as correct that he was paid his monthly wages directly by management No.1. AW1 admitted as correct that EPF and ESI contribution were being deducted from his monthly wages by management No.1. AW1 admitted as correct that he was covered under the ESI and EPF under the respective codes of the management No.1. AW1 admitted as correct that management No.1 was the contractor and management No.2 was the principal employer in his case. AW1 admitted as correct that management No.1 has deployed security staff and security Supervisors in the factory premises of management No.2. AW1 admitted as correct that his work was controlled and supervised by the Security Supervisor deployed by management No.1. AW1 in his cross-examination conducted by Learned Representative for management No.2 admitted as correct that he was employee of

management No.1. From the aforesaid version of AW1 Sonu Kumar it is duly proved on record that the workman was contractual employee appointed by management No.1 and was deputed to work as *Safai Karamchari* being a contractual employee with the establishment of management No. 2. Since the service conditions such as salary, deduction of ESI, EPF are governed by management No.1 accompanied with the fact that the security staff and the Security Supervisors deployed by management No.1 in the premises of management No.2 were controlling and was supervising the work of the workman, thus the workman was employee of management No.1. Consequently the relationship of employer & employee exists between management No.1 and the workman and there is no relationship of employer & employee between management No.2 and the workman.

19. Learned Representative for management No.2 argued that the workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act. To my opinion, the aforesaid argument advanced by Learned Representative for management No.2 is devoid of merits as under Section 2(s) of the ID Act 'workman' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceedings under this Act in relation to an industrial dispute includes any such person who has been dismissed / discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. In the present case the workman is unskilled person employed in the industry of management No.2 to perform the manual work as *Safai Karamchari*. The work and the nature of duty discharged by the workman does not fall in any of the exceptions (i) to (iv) of Section 2(s) of the ID Act. Moreover, the management No.1 & 2 failed to controvert the fact that the workman has served as contractual employee in the establishment of management No.2 for a continuous period from 12.11.2005 to 01.04.2017 and thus, completed 240 days in the 12 calendar months preceding his alleged termination. Therefore, the workman is a 'workman' as defined under Section 2(s) of the ID Act.

20. In the present case, the workman has challenged his termination as illegal. Learned Representative for the workman argued that on 01.04.2017 the services of the workman have been terminated by Shri Anil Mangal, official of management No.2 with his verbal orders without following the mandatory procedure laid down under the ID Act. In proceedings before the Labour Inspector, the management No.1 in his reply dated 11.12.2017 claimed that its contract with management No.2 was terminated w.e.f. 28.02.2017 and falsely stated that the workman has resigned from his job. The termination order being illegal, the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits. On the other hand, Learned Representative for management No.1 has taken the plea that the workman has resigned at his own due to personal reasons and received his full & final payment. The workman has already withdrawn his provident fund. Despite that management No.1 has offered the workman a job at another place where the work was available but the workman did not accept the offer. Learned Representative for management No. 2 contended that since there is no relationship of employer & employee between management No. 2 and the workman, therefore, the workman is not entitled to seek any relief from management No.2. To my opinion, as discussed above, there is no relationship of employer & employee between management No.2 and the workman. In the absence of relationship of employer & employee between the management No.2 and the workman, the question to terminate the workman from service by the official of management No.2 does not arise. However, the relationship of employer & employee exists between management No.1 and the workman. The question of legality or illegality of termination would arise only if the workman is terminated from service. In the present case, as proved from Exhibit 'M1' i.e. resignation letter dated 03.04.2017, the workman has resigned from service due to personal reasons with the request to settle his accounts and to accept his resignation. In this regard, AW1 Sonu Kumar, workman in his cross-examination conducted by Learned Representative for management No.1 has admitted that it is correct that he has resigned from service on dated 03.04.2017. AW1 further stated that he has seen the original resignation letter which bears his signatures and it is in his own handwriting which is Exhibit 'M1'. AW1 voluntarily stated that he has written the resignation letter at the instance of Shri Rohit Dogra - General Manager for the management No.1, who told

him that the payment of leave encashment will be released if he tender resignation. AW1 denied the suggestions as wrong that no one asked him to resign and the resignation is voluntarily. The aforesaid plea taken by AW1 in his volunteer statement that he has written the resignation letter at the instance of Shri Rohit Dogra - General Manager for the management No.1, who told him that the payment of leave encashment will be released if he tender resignation, is contradictory to his own plea taken by him in para 7 of his claim statement wherein workman has averred that official of management No. 2 Anil Mangal asked to sign on a blank paper in the name of salary receipt. If the abovementioned volunteer statement of the workman is taken as correct that it would imply that the resignation of the workman was obtained by Shri Rohit Dogra - General Manager of management No.1 on the pretext of releasing the payment of his leave encashment. If the plea taken by the workman in para 7 of his claim statement is taken as correct then it would imply that the signatures of the workman were obtained on a blank paper on the pretext of salary receipt. Both the aforesaid plea taken by the workman during his cross-examination and in his claim statement are self-contradictory to each other and thus not admissible into evidence. Even otherwise the workman used to sign as he has admitted his signatures on resignation letter Exhibit 'M1' which proves that the workman is literate person and no literate person of ordinary prudence would sign any blank document or would sign any writing without going through the contents thereof. Thus, it is duly proved on record that the workman has voluntarily tendered his resignation Exhibit 'M1' on 03.04.2017. Furthermore after tender of resignation the workman has received amount of ₹45,692/- from its employer / contractor i.e. management No.1 towards full and final settlement and confirmed that there is no amount outstanding which may be due to him from the management No.1 including leave encashment, bonus, gratuity or any other payment. The perusal of Exhibit 'M2' i.e. full & final settlement receipt would reveals that it bears the signatures of workman Sonu Kumar which are put across the revenue stamp affixed on the said receipt and it also bears thumb impression. It is not mentioned against the thumb impression whether it is left thumb impression (LTI) or right thumb impression (RTI) of workman Sonu Kumar. AW1 Sonu Kumar when put to cross-examination by management No.1 stated that Exhibit 'M2' bears his signatures and voluntarily stated that it does not bear his thumb impression. To my opinion, voluntarily statement of AW1 that Exhibit 'M2' does not bear his thumb impression is insignificant because the workman has admitted his signatures on receipt of full & final settlement Exhibit 'M2'. Moreover, it is duly proved on record that after resignation the workman is gainfully employed. In this regard AW1 in his cross-examination conducted by Learned Representative for management No.1 admitted as correct that he is working somewhere else on higher salary after his resignation with the management No.1. Consequently, there is no reason to accept the plea of the workman that his termination is illegal because the workman has not been terminated from the service by its employer i.e. management No.1 but the workman is proved to have resigned from his service due to his personal reasons and proved to have received the amount towards full & final settlement. No amount is outstanding against its employer / management No. 1.

21. Accordingly, issue No.1 is decided against the workman and in favour of the managements and issue No.2 is decided in favour of management No. 2 and against the workman.

Relief :

22. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27th January, 2023.

(Sd.). . .,

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 29th March, 2023

No. 13/1/9956-HII(2)-2023/4371.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 2/2019 dated 21.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MEHROON W/O LATE SHRI DAVID, R/O HOUSE NO. 2543, SECTOR 24, CHANDIGARH
NOW RESIDING AT HOUSE NO. 165, VILLAGE DADUMAJRA, UT, CHANDIGARH.
(Workman)

AND

1. GOVERNMENT MULTI SPECIALTY HOSPITAL, SECTOR 16, CHANDIGARH THROUGH ITS MEDICAL SUPERINTENDENT.
2. SECURE GUARD AND MANPOWER SERVICE, PLOT NO. 151, INDUSTRIAL AREA, PHASE 2, RAMDARBAR, UT, CHANDIGARH THROUGH TIS MANAGER PROPRIETOR (Management)

AWARD

1. Mehroon, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that on 23.05.2008 after conducting the interview process the workman was appointed as Ward Helper on daily wages with management No.1 through management No.2. The workman regularly worked for the last 10 years without any break with management No.1 the work of the workman was up to the mark and without any complaint. The services of the workman were terminated on 25.01.2018 without assigning any reason. Before termination the workman was drawing salary of ₹11,000/- per month after deduction of ₹ 1,300/- on account of PF. On 13.01.2018 the workman's sister from her native place Kolkata called her telephonically and informed that their father has expired. For the performance of last rites of her father, the workman applied leave from 15.01.2018 to 20.01.2018 vide leave application dated 15.01.2018. The leave application was written by Dr. Meenakshi and the same was handed over by the workman to Ms. Gurmeet- Incharge. On getting the necessary permission from the concerned Incharge the workman left for her native place Kolkata. On reaching Kolkata the workman found that her father was seriously ill and was on ventilator. After meeting her father the workman returned to Chandigarh on 22.01.2018 and resumed her duty on 22.01.2018. On reaching Chandigarh the workman was informed that her father had expired on 22.01.2018. Despite this fact the workman performed duty for half day on 22.01.2018 and worked for full day on 23.01.2018 and 24.01.2018. Thereafter on 25.01.2018 Ms. Surinder Kaur, the Nursing Superintendent informed her verbally that her services are no more required without assigning any reason for termination. The workman many times approached the management No.1 with a request to resume her duty but she was not allowed to do so. The workman referred the matter to Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh for consequential of the dispute. The demand notice dated 05.06.2018 was served upon the managements but no amicable settlement could be arrived. The conciliation proceedings failed. The termination of the workman is illegal on the following grounds :—

- (a) No show cause notice was issued to the workman before termination.
- (b) The workman was not charge sheeted for any misconduct.
- (c) Opportunity of being heard was not provided to the workman.
- (d) No inquiry was conducted against the workman and the termination is based on the hire and fire policy.

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- (e) Procedure and the mandate of law as provided under the ID Act, 1947 has not been followed before termination of services of the workman on 25.01.2018. Even no notice was given and retrenchment compensation was not paid under the provisions of the ID Act.

The workman was not allowed to join duty after 24.01.2018 despite her repeated requests to management No.1 and thereafter management No.1 has wrongfully terminated services of the workman and recruited fresh person in her place. The post against which the workman was appointed is of permanent / regular nature and still in existence. The said post has not been abolished by the management. The workman is still unemployed since her termination and is struggling hard to bring up her children being a poor widow. The termination of the workman from the service is illegal, unjustified, malafide and violation of the provisions of the ID Act and requires to be set aside. The workman is entitled to reinstatement in service with continuity of service, full back wages along with consequential benefits. Prayer is made that the award may be passed in favour of the workman and the workman may be reinstated in the service with continuity of service and full back wages.

2. On notice management No.1 contested the claim application by filing written reply on 29.04.2019 (reply filed and verified by Dr. V. K. Nagpal - Medical Superintendent, GMSH, Sector 16, Chandigarh) wherein preliminary submissions are made on the ground that the statement of claim as framed and filed against management No.1 is not maintainable and liable to be dismissed on this ground alone. The present claim statement has been filed with malafide intention against management No.1 with a sole motive to drag the management No.1 in frivolous litigation otherwise no cause of action has ever arisen and as such the instant statement of claim does not lie against the management No.1. The workman was deployed in the office of the management No.1 by the service provider i.e. management No.2. The workman was employee of management No.2 for all intents and purposes and in no case there was any relationship of master & servant or employer & employee with the office of management No.1 either implicitly or explicitly between the management No.1 and the workman.

3. Further in parawise reply, it is stated that the workman was deployed as Helper / Ward Servant on outsource basis through service provider i.e. management No. 2. The workman was never interviewed by management No. 1. As per execution of agreement between the office of management No.1 & 2, the persons / workmen including present workman shall be the employees of management No.2 for all intents and purposes and in no case there was any relationship of master & servant or employer-employee with the office of management No.1 either implicitly or explicitly. No leave application was received from the workman by the office of management No.1. Ms. Gurmeet Kaur, Nursing Sister, GMSH, Sector 16, Chandigarh vide letter dated 19.01.2018 had intimated that the workman (on out-source basis) being posted in the Fever Clinic in the morning shift was found absent from her duties without intimation w.e.f. 15.01.2018 to 19.01.2018 and one unknown person, a relative of workman was doing duty on her behalf during her absence period in the Fever Clinic. This fact was also known to the Doctor on duty in the morning shift in the Fever Clinic. This misconduct on the part of the workman was observed to be a very big blunder regarding performance of duty. It is a matter of record that on reaching her native place Kolkata the workman found that her father was seriously ill and was on ventilator and after meeting her father the workman returned to Chandigarh on 22.01.2018 and resumed her duty on 22.01.2018 and at that on reaching Chandigarh she was informed that her father has expired on 22.01.2018. It is also denied for want of knowledge that many times the workman approached the management No.1 with a request to resume her duties but she was not allowed to do so. It is also denied for want of knowledge that the workman is unemployed since her termination. Rest of the averments of claim statement are denied except para 6 which is replied being matter of record and para 7 which is replied in formal manner and prayer is made that the statement of claim qua the answering management No.1 may be dismissed with costs in the interest of justice, equity and fair play.

4. Management No.2 contested the claim statement by filing separate written reply on 27.05.2019 wherein it is stated that it is incorrect to say that the workman joined with Secure Guard Security & Manpower Services on 23.05.2008. The workman joined on 15.07.2014. The services of the workman were dispensed with on account of un-authorised absence and indiscipline, after following due procedure. A show cause notice dated SG/SMS/2018-11680 dated 24.01.2018 and order No.SG/SMS/2018/481 dated 27.06.2018 to dispense with the services were sent to her on the available address under speed post / registered post. The workman was employee on outsource basis of Secure Guard Security & Manpower Services and

was required to submit her leave application to Secure Guard Security & Manpower Services but she has not done so. Thus, her contention is not tenable. The workman at no stage kept informed the management No.2. It is not brought to the knowledge of management No.2 that on 25.01.2018 the workman was verbally informed by Ms. Surinder Kaur - Nursing Superintendent that her services are no more required. It is incorrect to say that no show cause notice was issued. As stated in para 1, show cause notice dated 24.01.2018 was issued. No request for hearing was made by the workman at any stage of hearing. No inquiry was made as the workman neither submitted reply to the show cause notice nor any such request was made. The workman was not retrenched as her services were dispensed with on account of unauthorised absence by giving due opportunity through show cause notice. The workman failed to submit any reply and as such her services were dispensed with vide letter dated 27.06.2018. The workman has no right to claim as a matter of right to allow her to join the duty. Prayer is made that the case may be decided on merits after giving due opportunity to the managements to present their case.

5. The workman filed replication to the written statement of management No.1 and separate replication to the written statement of management No.2 wherein the contents of the written statements except admitted facts of the claim statement are denied as untrue and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 07.08.2019:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between the management No.1 and workman ? OPM-1
3. Relief.

7. In evidence, the workman Mehroon examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Mark 'A' to Mark 'F'.

Mark 'A' is photocopy of application for causal leave dated 15.01.2018 addressed from workman to DSH, GMSH, Sector 16, Chandigarh seeking leave for five days w.e.f. 15.01.2017 to 20.01.2018 on the ground that her father has expired.

Mark 'B' is copy of death certificate of workman's father namely Md. Jamshed, wife's name Merajun Bibi, place of death Godda, Jharkhand, date of death 22.01.2018.

Mark 'C' is copy of demand notice dated 05.06.2018 raised by the workman.

Mark 'D' is copy of failure report bearing Memo No.6916 dated 17.10.2018 of Assistant Labour Commissioner-cum-Conciliation Officer.

Mark 'E' is copy of electronic reservation slip of railways 12304 / Poorva Express booking date 14.01.2018 10:26:14 Hours from New Delhi to Jasidih JN (JSNE) incorporating the date of boarding 14.01.2018, scheduled departure 14.01.2018, 17:35 and scheduled arrival 15.01.2018.

Mark 'F' is copy of electronic reservation slip of railways 13049 / Amritsar Express booking date 19.01.2018 11:51:20 Hours from Jasidih JN (JSNE) to Ambala Cantt. JN (UMB) incorporating the date of boarding 20.01.2018, scheduled departure 20.01.2018, 20:34 and scheduled arrival 22.01.2018.

8. On 27.10.2021 the workman tendered copy of identity card dated 31.08.2017 issued by management No.2 vide Mark 'E' (renumbered as Mark 'G') and on 27.10.2021 Learned Representative for the workman closed the evidence.

9. Management No.2 examined MW1 ParveenYadav - Manager, Secure Guard Security & Manpower, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents **Exhibit 'MW1/1'** to Exhibit 'MW1/4'.

Exhibit 'MW1/1' is copy of written intimation dated 19.01.2018 sent by Nursing Superintendent, GMSH, Sector 16, Chandigarh regarding absence of workman from 15.01.2018 and regarding one unknown person relative of Mehroon, doing duty on her behalf during her absence from Clinic from 15.01.2018 to till date.

Exhibit 'MW1/2' is copy of letter dated 24.01.2018 sent through speed post from management No.1 to the workman relating to the subject un-authorised absence and indiscipline for placing of unknown on duty without knowledge of the authority along with photocopy of postal receipt dated 27.01.2018.

Exhibit 'MW1/3' is copy of letter dated 27.06.2018 addressed from management No.2 to the workman, sent through registered post relating to the subject to dispense forthwith from service along with photocopy of postal receipt dated 29.06.2018.

Exhibit 'MW1/4' is the photocopy of registered post envelope issued from management No.1 to the workman having affixed photocopy of postal receipt dated 29.06.2018.

On 12.01.2022 Learned Representative for management No.2 closed the evidence.

10. Management No.1 examined MW2 Pawan Kumar - Superintendent (Admin Branch), GMSH, Sector 16, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with copy of report dated 19.01.2018 of Nursing Superintendent, GMSH, Sector 16, Chandigarh on the subject of information regarding absent report vide Exhibit 'MW2/1'. Management No.1 also examined MW3 Ms.Gurmeet Kaur - Nursing Sister, GMSH, Sector 16, Chandigarh, who tendered her affidavit Exhibit 'MW3/A' along with Exhibit 'MW2/3' (already exhibited in the testimony of MW2). On 16.11.2022 learned Law Officer closed the evidence of behalf of management No.1.

11. I have heard arguments of Learned Representative for the workman, Learned Law Officer for management No.1 and Learned Representative for management No.2 and have perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

12. Onus to prove this issue is on the workman.

13. Under this issue the workman Mehroon examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. On the other hand, management No.2 examined MW1 Parveen Yadav - Manager, Secure Guard Security & Manpower Services, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that he is well conversant with the facts of the case. The workman had joined purely on contract with the management No.2 on 15.07.2014. The workman had mentioned her correspondence address as house No.2543, Sector 24-C, Chandigarh. The management No.1 had served show cause notice and final notice under registered cover along with copy of show cause notice vide No.SG/SMS/2018/481 dated 27.06.2018 on the available address of the workman. The workman had left the residence. To this effect the report dated 02.07.2018 of postal authorities is without intimation - RTS. The workman wilfully absented herself from her duties from 15.01.2018 to 19.01.2018 and this fact was reported by Nursing Superintendent, GMSH, Sector 16, Chandigarh vide note dated 19.01.2018. The workman was an outsource workman performing essential services in the hospital, with the client management No.1 of management No.2. The workman despite specific instructions to apply for leave and to get the leave sanctioned before leaving the station, utterly failed to comply with the instructions and to follow the company Policy / Rules applicable to the workman. The services of the workman under the circumstances and on account of violation of company Policy / Rules applicable for performing essential services with the client, was got replaced by the client / hospital authorities as the client was facing hurdles and impediments leading to suffer welfare of patients in the hospital. The workman by her own whim and fancy or given to understand had put unknown person / relative of workman on duty in her place without permission of the client or the service provider, which further tantamount gross misconduct and against all norms of service conditions of the workman. The workman in para 2 of claim statement has pleaded that on 13.01.2018 she was informed over telephone that her father has expired. The workman in para 3 of the claim statement pleaded that on reaching the hospital / native place she found her father on ventilator and being seriously ill and again when the workman reached back at Chandigarh she was informed of death of her father on 22.01.2018. The position stated by the workman is totally contradictory and transpired that the averments of claim statement are misleading and distorting factual position of the matter. The workman is contractual staff performing essential services in hospital and could not leave the station without prior sanction of the leave as per company Policy / Rules etc. The workman's act of getting performed services from some unknown person / relative is highly objectionable and tantamount to gross-misconduct of company's norms. Hence, it is requested not to appreciate the claim of the workman rather to dismiss the same. MW1 has supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/4'.

14. The management No.2 examined MW2 Pawan Kumar - Superintendent Admin Branch, GMSH, Sector 16, Chandigarh, who vide his affidavit Exhibit 'MW2/A' deposed that he is well conversant with the facts and circumstances of the present case. The present statement of claim is not maintainable against the management No.1, being filed with the sole motive to drag the management authority in frivolous litigation. The claim statement deserves dismissal qua management No.1. The workman has no cause of action qua the management No.1. The workman was deployed in the office of management No.1 by service provider i.e. management No.2. As per the agreement executed between the managements the workman was the employee of management No.2 for all intents and purposes. In no case, there was any relationship of master and servant or employer and employee with the office of management No.1 either implicitly or explicitly. The workman was never interviewed by the management No.1. No application to avail leave was received by the office of management No.1 from the workman. Ms. Gurmeet Kaur - Nursing Sister, GMSH - 16, Chandigarh vide letter dated 19.01.2018 had intimated that the workman (on outsource basis) being posted in the Fever Clinic in the morning shift was found absent from duty without any intimation w.e.f. 15.01.218 to 19.01.2018. One unknown person / a relative of the workman was doing duty on her behalf during her absent period in the Fever Clinic in morning shift and this misconduct on part of the workman was observed to be very big blunder regarding performance of duties. The copy of letter dated 19.01.2018 is brought into evidence vide Exhibit 'MW2/1'. Ms. Surinder Kaur - Nursing Superintendent, GMSH, Sector 16, Chandigarh had forwarded the complaint by Nursing In-charge which was against the workman to the competent authority for commission of aforesaid misconduct which was observed to be a very big blunder. The competent authority after processing the said complaint had asked the management No.2 for immediate replacement of the workman. No relief is made out against the management No.1 as the workman was neither the employee of the management No.1 nor she was terminated by the management No.1.

15. Management No.1 examined MW3 Gurmeet Kaur - Nursing Sister, GMSH, Sector 16, U.T. Chandigarh who vide her affidavit Exhibit 'MW3/A' deposed that she was on duty on 19.01.2018 in Fever Clinic as Nursing Sister. The workman Mehroon (on outsource basis) was posted in the Fever Clinic in the morning shift. She was found absence from duty without any intimation with effect from 15.01.2018 to 19.01.2018. The unknown person / relative of the workman was doing duty on her behalf during her absence period in the Fever Clinic in the morning shift. In this way there was a gross misconduct on part of the workman regarding performance of duty. Regarding the absence of workman, she reported in writing on 19.01.2018 to the Nursing Superintendent / higher authority. Her report dated 19.01.2018 is Exhibit 'MW2/3'.

16. From the oral as well documentary evidence led by the parties, it comes out that admittedly the workman was appointed through contractor on outsource basis. In this regard the workman / AW1 Mehroon in her cross-examination stated that she was appointed through contractor on outsource basis. The aforesaid version of AW1 proves the fact that the workman was appointed on contractual basis by contractor i.e. management No.2. The workman has taken the plea that she joined as a Helper in the year 2008. The management No.2 / contractor has taken the plea that the workman was appointed on 15.07.2014. The plea taken by the workman that she joined in the year 2008 stands falsified and the plea taken by management No.2 that the workman joined on 15.07.2014 stands proved from the cross-examination of AW1 conducted by management No.2, wherein AW1 admitted as correct that she joined the Secured Guard in the year 2014 and not in 2008.

17. Undisputedly, the workman appointed through contractor / management No.2 was deputed to work as Helper with Government Multi Speciality Hospital, Sector 16, Chandigarh as an outsource employee. The workman was terminated from service by the management No.1 vide order dated 27.06.2018 on the ground that she remained absent from duty from 15.01.2018 to 19.01.2018 and some unknown person / relative of the workman was found performing duty at her place during her absence period, in an un-authorised manner. The written report dated 19.01.2018 / Exhibit 'MW2/3' to this effect was made by MW3 Ms. Gurmeet Kaur - Nursing Sister, GMSH, Sector 16, Chandigarh. On the basis of the report Exhibit 'MW2/3', Ms. Surinder Kaur, the then Nursing Superintendent, GMSH-16, Chandigarh made a written report dated 19.01.2018 / Exhibit 'MW2/1' requesting the service provider / management No.2 to replace the Helper i.e. workman Mehroon for smoothing functioning of the hospital and welfare of patients as soon as possible. On the other hand, the workman has taken the plea that she never remained absent and applied leave to DHS, GMSH-16, Chandigarh

vide application dated 15.01.2018 / Mark 'A' seeking casual leave from 15.01.2018 to 20.01.2018, which was verbally sanctioned.

18. The perusal of leave application Mark 'A' would reveal that the workman applied casual leave for five days from 15.01.2018 to 20.01.2018 on the ground that her father has expired. As per copy of death certificate Mark 'B' the date of death of MD Jamshed (father of the workman) is 22.01.2018. As per leave application Mark 'A' the workman applied leave on 15.01.2018 whereas as per railway reservation ticket / Mark 'E', the applicant boarded the train on 14.01.2018 at 17:35 Hours (5:35 P.M.) from New Delhi and reached the destination Jasidih JN (JSNE) on 15.01.2018. The railway ticket Mark 'E' is relied upon document of the workman which goes to prove that the workman boarded the train on 14.01.2018 in the evening at 5:35 P.M. from New Delhi and reached her destination place Jasidih JN (JSNE) i.e. State of Jharkhand on 15.01.2018, thus it is unbelievable that the workman applied leave on 15.01.2018 whereas on the said date she was in the State of Jharkhand which is at a distance of about more than 1500 kilometres by road from Chandigarh. Even on 14.01.2018 i.e. one day prior to 15.01.2018, the workman was at New Delhi to board a train. These facts falsify the plea of the workman that she applied leave on 15.01.2018 at Chandigarh. Therefore the plea raised by Learned Representative for the workman that there are certain over-writings on the relevant entries of leave register Exhibit 'MW2/2' is immaterial. Rather it is proved that leave application Mark 'A' is a manipulated document and the overwriting on the date of leave period and the date when the leave was applied is highly suspicious. Further the facts and circumstances mentioned above supports the plea of management No.1 that the workman was absent from duty from 15.01.2018 to 19.01.2018 without intimation and without getting the leave sanctioned. In view of the fact that the workman was absent from duty from 15.01.2018 to 19.01.2018, the written report dated 19.01.2018 / Exhibit 'M2/3' of Ms. Gurmeet Kaur - Nursing Superintendent cannot be disbelieved that in the absence of the workman her relative was found doing work at her place in the Fever Clinic. The plea taken by Learned Representative for the workman that the management No.1 did not get registered any FIR against the person, who was allegedly found working at the place of the workman. To my opinion, the aforesaid plea taken by Learned Representative for the workman carries no force as it was not mandatory for the management NO.1 to lodge FIR or initiate any criminal proceedings against the person who was working at the place of the workman.

19. Learned Representative for the workman argued that the show cause notice dated 24.01.2018 / Mark 'X1' is stated to be sent by the contractor / management No.2 to the workman through speed post vide postal receipt dated 27.01.2018 and the order of termination dated 27.06.2008 / Mark 'X2' is stated to be sent by the contractor / management No.2 to the workman through registered post vide postal receipt dated 29.06.2018. Both these documents are put to AW1 in her cross-examination by the management No.2. Learned Representative for the workman further argued that both the documents Mark 'X1' and Mark 'X2' were not received by the workman as the same were delivered on old address of the workman i.e. house No.2543, Sector 24, Chandigarh whereas as per the copy of identity card of the workman Mark 'G' issued by the contractor / management No.2 address of the workman is 172, Village Daddumajra, Chandigarh. To support his arguments Learned Representative of the workman referred cross-examination of AW1 wherein she has stated that she has not received any registered letter from Secure Guard through registered post Mark 'X1'. AW1 further stated that no termination letter was received by her through registered post Mark 'X2'. Both the letters were shown to AW1, who denied the same. Much stress is laid upon the fact by Learned Representative for the workman that the show cause notice Mark 'X1' was not delivered to the workman, therefore, the workman had no opportunity to reply the same. Consequently the termination order Mark 'X2' which is passed without affording any opportunity to the workman to explain the alleged un-authorised absence and indiscipline, is illegal and liable to be set aside. To my opinion the aforesaid arguments advanced by Learned Representative for the workman are devoid of merits because no doubt in the identity card Mark 'G' issued by the contractor / management No.2 the home address of the workman is written as 172, Village Daddumajra, Chandigarh but it is own version of the workman / AW1 that correspondence address given by her to the contractor / management No.2 is house No.2543, Sector 24, Chandigarh. It is the duty of the workman to report her contractor the change, if any, in her address of correspondence but the workman admittedly did not report any change of her correspondence address to the contractor / management No.2. In this regard AW1 / workman in her cross-examination conducted by management No.2 admitted as correct that she had given the address House No.2543, Sector 24-C, Chandigarh and at no stage she had intimated in regard to change of her address. In view of the aforesaid of AW1 / workman, the show cause notice Mark 'X1' and termination order Mark 'X2' are correctly

sent to the given correspondence address of the workman. The workman wilfully did not receive the said letters. The termination order Exhibit MW1/3' is proved to have been passed by management No.2 after issuing show cause notice dated 24.01.2018 / Exhibit 'MW1/2' to the workman, who did not file any reply to the same. Therefore, the termination order dated 27.06.2018 / Exhibit 'MW1/3' is legal and valid.

20. Accordingly, this issue is decided against the workman and in favour of the managements.

Issue No. 2 :

21. Onus to prove this issue is on the management No.1.

22. The management No.1 has denied the relationship of employer-employee between the management No.1 and the workman. Admittedly, AW1 / workman was appointed in the year 2014 on contractual basis by the contractor Secure Guard Security and Manpower Services / management No.2 and was deputed to work as an Outsource employee with Government Multi-speciality Hospital, Sector 16, Chandigarh i.e. management No.1. AW1 / workman in her cross-examination conducted by management No.1 stated that her appointment was through contractor on outsource basis. Furthermore, the services of the workman are terminated by the contractor / management No. 2 vide letter dated 27.06.2018 / Exhibit 'MW1/3'. Thus, the relationship of employer and employee exists between management No.2 and the workman and there is no relationship of employer & employee the management No.1 and the workman.

23. Accordingly, this issue is proved in favour of management No.1 and against the workman.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 21st February, 2023.

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th April, 2023

No. 13/1/9950-HII(2)-2023/4791.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 118/2018 dated 27.01.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARISH S/O SHRI RAM CHARAN R/O H. NO. 170, SAHI MAJRA, DISTRICT MOHALI (PB.) (Workman)

AND

1. HAWKS EYE SECURITY SERVICES PVT. LTD., SCO 181-182, 1ST FLOOR, SECTOR 8-C, CHANDIGARH, THROUGH ITS AUTHORISED SIGNATORY.
2. GROZ-BECKERT ASIA PVT. LTD., 133-135, PHASE-I, INDUSTRIAL AREA, CHANDIGARH, THROUGH ITS FACTORY MANAGER. (Management)

AWARD

1. Harish, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed as a

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Safai Karamchari (House Keeping) on 01.01.2004 by M/s Hawks Eye Security Services Pvt. Ltd. (*hereinafter referred as 'management No.1*). The workman was deployed at the work place at M/s Groz Beckert Asia Pvt. Ltd. Industrial Area, Phase - I, Chandigarh (*hereinafter referred as 'management No. 2'*). Hence, the workman is a 'workman' as defined under Section 2(s) of the ID Act. Management No.1 is the contractor and management No. 2 is the principal employer where the workman worked as *Safai Karamchari* (House Keeping). The daily timings of the workman were from 7:00 A.M. to 4:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by both the managements. The workman was being paid ₹13,500/- as gross salary including incentives and allowances and after deduction of provident fund, ESI and diet deduction, the workman was receiving an amount of ₹12,288/- per month by management No.2 through the contractor. The last drawn net salary of the workman is ₹12,288/- per month after the deductions mentioned above. Management No.2 paid ₹1,200/- on 18.10.2018 as Diwali Festival Sweets and also paid ₹3,000/- in 2010 while celebrating its Golden Jubilee Celebration. This was paid to all employees of management No. 2. The workman was enjoying yearly increment given by management No. 2. The work & conduct of the workman while in service was unblemished and satisfactory. Neither any charge sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his service. On 01.04.2017 the workman reported for duty as usual. Anil Managal, official of management No.2 asked the workman to sign on a blank paper in the name of salary slip. Then, after one hour the official of management No.2 told the workman not to come on duty until called again. Hence, the managements illegally, arbitrarily and malafidely terminated the services of the workman all of the sudden without following the mandatory procedure laid down under the provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The junior employees than the workman have been retained in service in violation of provision of law by the managements. The Housekeeping and cleaning work is still going on as the same is regular work of the factory of management No.2. The workman has served in the factory of management No.2 for continuous period from 01.01.2004 to 01.04.2017. The workman has completed 240 days in the 12 calendar months preceding his termination. On 27.10.2017 the workman lodged a complaint with Labour Inspector, U.T. Chandigarh for his reinstatement with continuity of service and full back wages but no amicable settlement could be made possible. During the proceedings before the Labour Inspector, management No.1 filed reply dated 11.12.2017 and claimed that its contract with management No. 2 was terminated w.e.f. 28.02.2017 and falsely stated that the workman has resigned from his job. Thereafter, the workman submitted demand notice dated 11.05.2018 to the managements before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh. Both the managements submitted its reply dated 25.09.2018 and 04.09.2018 respectively. The Conciliation Officer initiated conciliation proceedings but the same failed. The conciliation Officer vide letter bearing Memo No.6807 dated 12.10.2018 advised the workman to refer Section 2-A of the ID Act. During the pendency of the conciliation proceedings, management No.1 in order to create illusion sent ante dated notice under Section 2-A of the ID Act dated 14.06.2018, actually sent on 27.06.2018, to the workman asking him to join the duty. When the workman contacted the management No.1, he was told to work at some other place at a salary of ₹6,000/- which was much lower than his last paid salary of ₹13,500/-. The workman had made it clear to management No.1 that he is entitled to same wages as he was last paid and he would not work for lesser amount. However, no such offer was made by the management No.1 before the Conciliation Officer. Prayer is made that managements may be directed that the workman be reinstated into service with continuity of service, full back wages and all the benefits to which the workman is entitled under the provisions of law.

2. On notice, management No.1 appeared through its representative Shri A. K. Bakshi and contested the claim statement by filing written statement on 12.07.2019, wherein preliminary objections are raised on the ground that the workman resigned from his post and *Safai Karamchari* at his own due to personal reasons and received his full & final settlement payment. The claim application have been filed to harass the management and to extract more money from them. The workman has also withdrawn his provident fund. Hence, as per settled law the workman has lost his lien on the job and estopped from raising the present dispute. The present claim statement is not maintainable. The workman has not approached with clean hands and suppressed the material facts from this Hon'ble Court. Hence, the workman is not entitled to any relief.

3. Further on merits, it is admitted to the extent that the workman was deployed in the house-keeping service in the establishment of management No.2 by the answering management No.1 under a contract for service. It is admitted that management No.1 is contractor and management No.2 is the principal employer

where the workman worked as *Safai Karamchhari* (House-keeping). The workman resigned at his own due to personal reasons and received his full & final payment. It is admitted to the extent that the workman made a complaint to the Labour Inspector and the answering management had filed its detailed reply with all the proofs with Labour Inspector. The reply filed by the management was accepted by the Labour Inspector and the workman was advised to withdraw his complaint. The workman raised a demand notice on 11.05.2018 despite the fact that he had himself resigned from the service and taken full & final settlement. The answering management still offered him a job at another place where the work was available but the worker was adamant to work at the premises of management No.2 only and did not accept the offer of the answering management. It is denied that the workman was offered salary of ₹6,000/- only. Rest of the averments of claim statement are denied as wrong and prayer is made that the statement of claim / reference may be dismissed with cost.

4. Management No.2 appeared through its Representative Shri D. P. Sharma and contested the claim statement by filing the separate written statement on 12.07.2019 wherein preliminary objections are raised on the grounds that the person concerned was never in the employment of management No.2. There was privity of contract between the concerned person and management No.2. As such no employer-employee relationship ever existed between them. Therefore, the question of appointment or termination of the concerned person by the management No.2 does not arise. The concerned person was employee of management No.1 (contractor), who is a licensed contractor under The Contract Labour (Regulation & Abolition) Act, 1970 (*hereinafter in short referred as '1970 Act'*). The concerned person was getting his monthly wages from management No.1 (contractor). Management No.1 is covered under The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (*hereinafter in short referred as '1952 Act'*) and Employees State Insurance Act, 1948 (*hereinafter in short referred as '1948 Act'*) having EPF Code PBCHD0012070000 and ESI Code 17120364120011001 and the concerned person being an employee of the contractor was also covered under EPF and ESI under the aforesaid EPF and ESI codes of the management No.1 (contractor). The concerned person has already withdrawn his EPF accumulation on the recommendations of his employer namely M/s Hawks Eye Security Services Pvt. Ltd. i.e. management No.1 as intimated by management No.1. Management No.2 has no role to play in the engagement and termination of services of the concerned person. The concerned person used to work as per the instructions of Security Supervisor of management No.1. The work & conduct of the concerned person was supervised and controlled by the management No.1 through its Security Supervisor. Therefore, the present statement of claim / reference is bad in the eyes of law and needs to be dismissed on this ground itself. The concerned person was employed by the management No.1 and his services were regulated by the management No.1 in accordance with 1970 Act and Rules thereunder and not under the ID Act. Therefore, the concerned person has the remedy to file claim under 1970 Act and Rules thereunder but not under the ID Act. The present claim statement / reference needs to be rejected on this ground also. From the written comments to the demand notice filed by management No.1 that the applicant had resigned due to his personal reasons and also received his full & final dues. The concerned person has also withdrawn his EPF accumulations on the recommendations of his employer i.e. management No.1. The concerned person was offered alternate employment by the management No.1 which was not availed by the concerned person. Hence, the present claim statement / reference is not maintainable and therefore liable to be dismissed on this ground too. Since there was no employment of the person concerned with the management No.2 the question of termination and appointment of the concerned person by the management No.2 does not arise. Hence, the present claim statement / reference seeking any relief from management No.2 is bad in the eyes of law and liable to be dismissed on this score as well.

5. Further on merits, it is stated that the concerned person was employee of management No.1 (contractor) and he was deployed to work as *Safai Karamchhari* (House-keeping) in the factory of management No.2 as a contract labour. Hence, the date of joining of the concerned person cannot be confirmed by the management No. 2. It is denied as wrong that the concerned person is a 'workman' as defined under Section 2(s) of the ID Act. Management No.2 being the principal employer is duly registered under the 1970 Act having registration No.PE/CL/UT/CHD/49 whereby management No.2 has been authorised to engage management No.1 as a contractor. Similarly, the management No.1 is a licensed contractor under 1970 Act having licence No.CI(UT)/CHD/239. It is denied that the work of the concerned person was controlled, supervised and assessed by the management No.2. In fact, the work of the concerned person was controlled, supervised and assessed only by the management No.1. The concerned person was employee of management No.1 and therefore, it is the management No.1, who could confirm the rate of wages paid to the

concerned person. It is denied as wrong that management No.2 has ever paid ₹1,200/- as Diwali Festival Sweets or ₹3,000/- in 2010 on the occasion of Golden Jubilee Celebration. In fact, management No.2 has never paid any amount whatsoever directly to the concerned person. The concerned person was getting his monthly wages and other payments from the management No.1. It is denied for want of knowledge last drawn net salary of the workman was ₹12,288/-. It is denied that on 01.04.2017 the concerned person was called by Shri Anil Mangal, official of management No.2 and he directed the concerned person not to come on duty from the next date and that he forced the concerned person to sign on some blank papers and that the concerned person refused for the same. The factual position, however, remains that the concerned person was never called by Shri Anil Mangal and he was never directed not to come on duty on the next day. He was never forced to sign on blank papers. It is denied as wrong that the services of the concerned person was illegally, arbitrarily and malafidely terminated by the management No. 2. The concerned person was the employee of the management No. 1. Hence, the management No.2 had no role to play in the appointment or termination of the services of the concerned person. Even otherwise Section 25-G of the ID Act is not attracted in the present case. It is noted from the written comments to the demand notice filed by the management No.1 that the applicant had resigned due to his personal reasons and also received his full & final dues. Further, it is admitted by the applicant that he was offered alternate employment by the management No.1 which was not availed by the concerned person. It is denied that the concerned person has served for continuous period as an employee of management No.2 from 01.01.2004 to 01.04.2017. The concerned person was the employee of management No. 1. The management No.1 had submitted its reply to the complaint of the applicant on 11.12.2017 wherein it was mentioned that the applicant was told to adjust with other clients but the applicant came to its office and resigned due to his personal reasons and received his full & final dues. The concerned person has also withdrawn his EPF accumulation on the recommendations of his employer i.e. management No.1. It is admitted to the extent that the applicant submitted demand notice dated 11.05.2018 for which the conciliation proceedings took place. The management No.2 and the management No.1 submitted replies to the demand notice. During conciliation alternate employment was offered to the applicant by the management No.1 but the applicant resigned due to his personal reasons and received his full & final dues from the management No.1. Rest of the averments of claim statement are denied as wrong and prayer is made that statement of claim / reference may be dismissed with exemplary cost.

6. Rejoinder not filed. From the pleadings of the parties, following issues were framed *vide* order dated 26.02.2020 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between Management No.1 and workman ? OPM-2
3. Relief.

7. In evidence, the workman Harish examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W3'.

Exhibit 'W1' is copy of reply dated 11.12.2017 filed Haws Eye Security Services Pvt. Ltd. to Labour Inspector Circle I & III, U.T. Sector 30, Chandigarh relating to the subject complaint received from Shri Sonu Kumar regarding non-payment of salary.

Exhibit 'W2' is copy of reply dated 14.06.2018 submitted by Hawks Eye Security Services Pvt. Ltd. to Gulshan Kumar relating to the subject demand notice under Section 2-A of the ID Act.

Exhibit 'W3' is the copy of registered postal envelope addressed from Hawks Eye Security Pvt. Ltd. to Gulshan Kumar #2721/1, Sector 49-C, Chandigarh along with postal receipt dated 27.06.2018.

On 16.08.2022 Learned Representative for the workman closed evidence on behalf of the workman.

8. It is pertinent to mention here that during cross-examination of AW1 Sonu Kumar documents Exhibit 'M1' and Exhibit 'M2' were put to him by Shri A. K. Bakshi - Representative for management No.1.

Exhibit 'M1' is the original resignation letter dated 04.04.2017 submitted by the workman Harish.

Exhibit 'M2' is the original receipt dated 06.04.2017 of full & final settlement issued by the workman Harish.

9. On the other hand, management examined MW1 Ramesh Atwal - SSA O/o Regional Provident Fund Commissioner, Sector 17-D, Chandigarh, who brought into evidence letter dated 14.11.2022 pertaining to the settlement of the workman i.e. Harish S/o Ram Charan, PF No.PB/CHD/12070/2977 vide Exhibit 'M3' and the documents pertain to the claim settlement of the workman consisting of page 1 to 17 vide Exhibit 'M4'. On 18.01.2023 Learned Representative for management No.1 closed the evidence. On 27.01.2023 Learned Representative for management No.2 closed the evidence.

10. I have heard arguments of Learned Representative for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No.1 & 2 :

11. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

12. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.2.

13. In order to prove its case the workman Harish examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto and supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'. On the other hand, Learned Representative for management No.1 examined MW1 Ramesh Attwal, SSA, Office of Regional Provident Commissioner, Sector 17-D, Chandigarh, who deposed that he has brought the summoned record. The workman in the present case has withdrawn his Provident Fund on 21.07.2017. The workman has withdrawn his provident fund on account of leaving the employment of his employer, for which the workman filled up and submitted Form No. 19. He has not brought the Form No. 19 because the record beyond three years has been weeded out by the department. Office note to that effect is Mark 'A'. Form 19 is not used for withdrawal of advance against provident fund and it is filled only after the cessation of employment of the workman. He has brought a letter dated 14.11.2022 pertaining to the settlement of workman i.e. Harish S/o Shri Ram Charan PF No.PB/CHD/12070/2977 which is Exhibit 'M3'. He has also brought documents pertaining to the claim settlement of the workman and produce the same as Exhibit 'M4' containing page 1 to 17.

14. Management No.2 did not lead any evidence either oral or documentary.

15. From the oral as well as documentary evidence on record, it comes out that there is no dispute between the parties with regard to the facts that the management No.1 is licensed contractor under 1970 Act having licence No.CI/UT/CHD/239. Management No.2 is registered under 1970 Act having registration No.PE/CL/UT/CHD/49 whereby management No.2 has been authorised to engage management No.1 as contractor. Further there is no dispute between the parties with regard to the fact that the workman was appointed as *Safai Karamchari* (House-keeping) by management No.1 and was deployed to work as *Safai Karamchari* in the factory of management No.2. The workman has alleged that he was appointed by management No.1 on 01.01.2004. Management No.1 admitted this fact in para 1, on merits, of the written statement. Management No.2 in para No.1 on merits, in its written statement stated that the workman was deployed to work as *Safai Karamchari* in the factory of management No.2 as a contract labourer but did not mention the date of his joining in the factory of management No.2 and has taken the plea that his date of joining can not be confirmed by the management No. 2. The management No.2 did not lead any oral or documentary evidence to controvert the fact that the workman was deployed to work as *Safai Karamchari* in the factory of management No.2 w.e.f. 01.01.2004.

16. Learned Representative for management No.2 argued that there is no relationship of employer & employee between the management No.2 and the workman. Much stress is laid upon the fact by Learned Representative for management No.2 that there is no privity of contract between the workman and management No.2. The workman is a contract worker appointed by management No.1 and deployed to work at the factory of management No.2. Besides, the workman was getting his monthly wages from management No.1. The workman being an employee of the contractor / management No.1 was covered under the EPF and

ESI codes of the contractor / management No.1. On the other hand, management No.1 / contractor in its written statement has admitted the fact that the workman was deployed by management No.1 in house-keeping services in the establishment of management No.2 under a contract for service. The aforesaid arguments advanced by Learned Representative for management No.2 stands proved from the cross-examination of AW1 Harish / workman wherein he has admitted as correct that he was deployed as *Safai Karamchari* by the management No.1 in the factory premises of the management No.2. AW1 admitted as correct that he was paid his monthly wages directly by management No.1. AW1 admitted as correct that EPF and ESI contribution were being deducted from his monthly wages by management No.1. AW1 admitted as correct that he was covered under the ESI and EPF under the respective codes of the management No.1. AW1 admitted as correct that management No.1 was the contractor and management No.2 was the principal employer in his case. AW1 admitted as correct that management No.1 has deployed security staff and security Supervisors in the factory premises of management No.2. AW1 admitted as correct that his work was controlled and supervised by the Security Supervisor deployed by management No.1. AW1 in his cross-examination conducted by Learned Representative for management No.2 admitted as correct that he was employee of management No.1. From the aforesaid version of AW1 Harish it is duly proved on record that the workman was contractual employee appointed by management No.1 and was deputed to work as *Safai Karamchari* being a contractual employee with the establishment of management No.2. Since the service conditions such as salary, deduction of ESI, EPF are governed by management No.1 accompanied with the fact that the security staff and the Security Supervisors deployed by management No.1 in the premises of management No.2 were controlling and was supervising the work of the workman, thus the workman was employee of management No.1. Consequently the relationship of employer & employee exists between management No.1 and the workman and there is no relationship of employer & employee between management No.2 and the workman.

17. Learned Representative for management No.2 argued that the workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act. To my opinion, the aforesaid argument advanced by Learned Representative for management No.2 is devoid of merits as under Section 2(s) of the ID Act 'workman' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceedings under this Act in relation to an industrial dispute includes any such person who has been dismissed / discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. In the present case the workman is unskilled person employed in the industry of management No.2 to perform the manual work as *Safai Karamchari*. The work and the nature of duty discharged by the workman do not fall in any of the exceptions (i) to (iv) of Section 2(s) of the ID Act. Moreover, the management No.1 & 2 failed to controvert the fact that the workman has served as contractual employee in the establishment of management No.2 for a continuous period from 01.01.2004 to 01.04.2017 and thus, completed 240 days in the 12 calendar months preceding his alleged termination. Therefore, the workman is a 'workman' as defined under Section 2(s) of the ID Act.

18. In the present case, the workman has challenged his termination as illegal. Learned Representative for the workman argued that on 01.04.2017 the services of the workman have been terminated by Shri Anil Mangal, official of management No.2 with his verbal orders without following the mandatory procedure laid down under the ID Act. In proceedings before the Labour Inspector, the management No.1 reply dated 11.12.2017 and claimed that its contract with the management No.2 was terminated w.e.f. 28.02.2017 and assured the workman that management No.1 will adjust the workman somewhere else. The termination order being illegal, the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits. On the other hand, Learned Representative for management No.1 has taken the plea that the workman has resigned at his own due to personal reasons and received his full & final payment. The workman has already withdrawn his provident fund. Despite that management No.1 has offered the workman a job at another place where the work was available but the workman did not accept the

offer. Learned Representative for management No.2 contended that since there is no relationship of employer & employee between management No.2 and the workman, therefore, the workman is not entitled to seek any relief from management No.2. To my opinion, as discussed above, there is no relationship of employer & employee between management No.2 and the workman. In the absence of relationship of employer & employee between the management No.2 and the workman, the question to terminate the workman from service by the official of management No.2 does not arise. However, the relationship of employer & employee exists between management No.1 and the workman. The question of legality or illegality of termination would arise only if the workman is terminated from service. In the present case, as proved from Exhibit 'M1' i.e. resignation letter dated 04.04.2017, the workman has resigned from service due to domestic issue with the request to accept his resignation. In this regard, AW1 Harish, workman in his cross-examination conducted by Learned Representative for management No.1 has admitted as correct that he has resigned from service on dated 04.04.2017. AW1 further stated that he has seen the original resignation letter Exhibit 'M1' which bears his signatures. AW1 voluntarily stated that resignation letter is not written in his handwriting. To my opinion the above mentioned volunteer portion of statement of AW1 is insignificant as AW1 has admitted his signatures on his resignation letter Exhibit 'M1'. Besides, AW1 has admitted the fact as correct that he resigned from services on 04.04.2017. The workman in para 7 of his claim statement pleaded that his signatures were obtained on a blank paper in the name of salary receipt. To my opinion, the aforesaid plea taken by the workman is devoid of merits because the workman has admittedly signed the resignation letter Exhibit 'M1', thus, the workman is literate person and no literate person of ordinary prudence would sign any blank document or would sign any writing without going through the contents thereof. Thus, it is duly proved on record that the workman has voluntarily tendered his resignation Exhibit 'M1' on 04.04.2017. Furthermore after tender of resignation the workman has received amount of ₹ 66,000/-from its employer / contractor i.e. management No.1 towards full and final settlement and confirmed that there is no amount outstanding which may be due to him from the management No.1 including leave encashment, bonus, gratuity or any other payment. The perusal of Exhibit 'M2' i.e. full & final settlement receipt would reveals that it bears the signatures of workman Harish which are put across the revenue stamp affixed on the said receipt and it also bears thumb impression. It is not mentioned against the thumb impression whether it is left thumb impression (LTI) or right thumb impression (RTI) of workman Harish. However, the workman Harish has not denied his thumb impression and signatures appended on Exhibit 'M2'. In this regard AW1 Harish when put to cross-examination by management No.1 stated that Exhibit 'M2' bears his signatures and thumb impression. Consequently, there is no reason to accept the plea of the workman that his termination is illegal because the workman has not been terminated from the service by its employer i.e. management No.1 but the workman is proved to have resigned from his service due to his personal reasons and proved to have received the amount towards full & final settlement. No amount is outstanding against its employer / management No. 1.

19. Accordingly, issue No.1 is decided against the workman and in favour of the managements and issue No. 2 is decided in favour of management No.2 and against the workman.

Relief :

20. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 27th January, 2023.

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th April, 2023

No. 13/1/9952-HII(2)-2023/4793.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 62/2022 dated 11.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AJAY KUMAR, H. NO. 598, VILLAGE HALLOMAJRA, UT, CHANDIGARH. (Workman)

AND

M/S BDS DÉCOR & PREFAB PVT. LTD., PLOT NO. 181, INDUSTRIAL AREA,
PHASE-I, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Ajay Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed by the management as Fitter / Welder in the month of March, 2001. The workman remained in the uninterrupted employment up to 15.11.2021 when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹ 16,000/- per month as wages. On 15.11.2021 the workman was refused work by the management without assigning any reason and notice. For his reinstatement and non-payment of wages the workman lodged a complaint dated 28.12.2021 with the Labour Inspector, U.T. Chandigarh. The Representative of the management appeared before the Labour Inspector on two dates and assured to make the payment of all legal dues but thereafter no one appeared on behalf of management. Refusal of work amounts to termination which is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The management appointed fresh person at his place which is in violation of Section 25-H of the ID Act. For his reinstatement the workman served upon the management a demand notice dated 29.06.2022. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The workman received a letter dated 11.07.2022 for one Mr. Raghuvir Singh, Advocate during the course of conciliation proceedings. The Advocate instead of settling the matter threatened and levelled allegation on the workman. The workman replied the letter on 23.08.2022 during conciliation proceedings. The workman denied the allegations and reiterated his demand. Termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labor practice. Prayer is made that the workman may be reinstated with continuity of service, full back wages as the workman remained unemployed during the period i.e. from the date of termination till date and without any change in his service condition.

2. On notice, the management appeared through its Manager Sanjay Madan, who on 23.12.2022 filed authority letter on behalf of the management.

3. During the pendency of the present industrial dispute, case taken up in the Pre-Lok Adalat held on 03.02.2023 wherein the parties settled their dispute amicably. The workman got recorded his statement on 03.02.2023, which is reproduced as below :—

"Stated that I have settled my dispute with the management and have received cheque No.070031 dated 03.02.2023 for Rs.1,80,000/- of Axis Bank, Chandigarh from the management towards full & final settlement of my claim including claim filed before the Authority under the Payment of Wages Act at Chandigarh. Copy of cheque is Mark 'A'. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

4. Statement of the workman is countersigned by his Representative.

5. The case taken up in National Lok Adalat. Heard. In view of the above statement of the workman, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 11th February, 2023.

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th April, 2023

No. 13/1/9951-HII(2)-2023/4797.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 61/2022 dated 11.02.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

ANIL KUMAR, H.NO. 1438, DASHMESH NAGAR, NAYA GAON, DISTRICT MOHALI.
(Workman)

AND

M/S BDS DÉCOR & PREFAB PVT. LTD., PLOT NO. 181, INDUSTRIAL AREA,
PHASE-I, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Ajay Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed by the management as Driver in the month of January, 2008. The workman remained in the uninterrupted employment up to 17.12.2021 when his services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹ 17,000/- per month as wages. On 17.12.2021 the workman was refused work by the management

without assigning any reason and notice. For his reinstatement and non-payment of wages the workman lodged a complaint dated 28.12.2021 with the Labour Inspector, U.T. Chandigarh. The Representative of the management appeared before the Labour Inspector on two dates and assured to make the payment of all legal dues but thereafter no one appeared on behalf of management. Refusal of work amounts to termination which is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The management appointed fresh person at his place which is in violation of Section 25-H of the ID Act. For his reinstatement the workman served upon the management a demand notice dated 29.06.2022. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The workman received a letter dated 11.07.2022 for one Mr. Raghuvir Singh, Advocate during the course of conciliation proceedings. The Advocate instead of settling the matter threatened and levelled allegation on the workman. The workman replied the letter on 23.08.2022 during conciliation proceedings. The workman denied the allegations and reiterated his demand. Termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labor practice. Prayer is made that the workman may be reinstated with continuity of service, full back wages as the workman remained unemployed during the period i.e. from the date of termination till date and without any change in his service condition.

2. On notice, the management appeared through its Manager Sanjay Madan, who on 23.12.2022 filed authority letter on behalf of the management.

3. During the pendency of the present industrial dispute, case taken up in the Pre-Lok Adalat held on 03.02.2023 wherein the parties settled their dispute amicably. The workman got recorded his statement on 03.02.2023, which is reproduced as below :—

"Stated that I have settled my dispute with the management and have received cheque No.070032 dated 03.02.2023 for Rs.1,40,000/- of Axis Bank, Chandigarh from the management towards full & final settlement of my claim including claim filed before the Authority under the Payment of Wages Act at Chandigarh. Copy of cheque is Mark 'A'. My present industrial dispute may be disposed off accordingly in the Lok Adalat."

4. Statement of the workman is countersigned by his Representative.

5. The case taken up in National Lok Adalat. Heard. In view of the above statement of the workman, this industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . .,

The 11th February, 2023.

(JAGDEEP KAUR VIRK)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Rama Shankar, S/o Bachchu Lal Yadav, R/o Plot No. 11, Ind. Area-1, Chandigarh, have changed my name to Ram Shankar Yadav.

[439-1]

I, Jasvir Kaur, W/o Rajvir Singh, Mann, R/o 2126, Sector 21-C, Chandigarh changed my name Jasvir Kaur Mann.

[440-1]

I, Rajvir Singh, S/o Jagir Singh, R/o 2126, Sector 21-C, Chandigarh, changed my name Rajvir Singh Mann.

[441-1]

I, Megha, W/o Sanjeev Kumar, R/o 1691, Phase-II, Ramdarbar, Chandigarh, have changed my name from Megha to Ganga.

[442-1]

I, Pranika Arora, W/o Pulkit Dewan, House No, 156, Sector 16-A, Chandigarh, have changed my name to Pranika Dewan.

[443-1]

I, Kulwinder Kaur, W/o Ravinder Pal, House No. 466, Sector 37-A, Chandigarh, have changed my name from Kulwinder Kaur to Kulwinder Kaur Bamra.

[444-1]

I, Urmila, W/o Mast Ram, R/o # 458/3, Small Flat Maloya, Chandigarh, have changed my name to Subhadra Devi.

[445-1]

I, Sangeeta Sarao, W/o Sanjeev Kumar, R/o # 465/1, Sector 45-A, Chandigarh, have changed my name to Sangeeta.

[446-1]

I, Harbans Kaur, W/o Bahadur Singh, R/o 3065/2, Sector 44-D, Chandigarh, changed my name Harjeet Kaur.

[447-1]

I, Kishan Bahadur, S/o Sant Bahadur, R/o 3222, Sector 28-D, Chandigarh, have changed my name to Kishan.

[448-1]

I, Jasbir Singh, S/o Ramdass, R/o # 49, Village Badheri, Sector 41-D, Chandigarh, have changed my name to Yashbir Singh in future.

[449-1]

I, Narinder Pal, S/o Late Sh. Kikkar Singh Katoch, R/o H. No. 255, Sector 30-A, Chandigarh, have changed my name from Narinder Pal to Narinder Katoch.

[450-1]

I, Parkash Puri, S/o Lal Bahadur Puri, R/o # 546, Sector 36-B, Chandigarh, have changed my name to Prakash Puri.

[451-1]

I, Saroj Negi, W/o Birbal Singh Negi, R/o 5459, Modern Housing Complex Manimajra, Sector-13, Chandigarh, changed my name Sarojini Negi.

[452-1]

I, Navita Chopra, D/o Jagdish Arora, House No. 3123, Sector 40-D, Chandigarh, have changed my name from Navita Chopra to Navita A.

[453-1]

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